Tribunal Procedure Committee

Response to the Consultation on possible changes to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and the Tribunal Procedure (Upper Tribunal) Rules 2008

(Consultation period: 8 July 2023 on 29 August 2023)

Reply from the Tribunal Procedure Committee
October 2023

Introduction

1. The Tribunal Procedure Committee ("the TPC") is the body that makes rules that govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. Both are independent tribunals. The First-tier Tribunal is the first instance tribunal for most jurisdictions, while the Upper Tribunal is primarily responsible for appeals.

2. 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.

3. 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.

4. 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.

5. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.

6. Further information on the TPC can be found at our website: https://www.gov.uk/government/organisations/tribunal-procedure-committee

7. The First-tier Tribunal (Immigration and Asylum Chamber) (the "FTTIAC") 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 FTTIAC can be found at: https://www.gov.uk/courts-tribunals/first-tier-tribunal-immigration-and-asylum

8. The procedure rules that apply in the FTTIAC are the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the FTTIAC Rules"); those which apply in the Upper Tribunal (IAC) are the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules").

9. The current FTTIAC Rules and UT 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

10. A consultation ("the Consultation") ran from 8 July 2023 to 29 August 2023. Its purpose was to seek views on possible changes to the FTTIAC Rules in relation to appeals under the EU Settlement Scheme (addressed under Part 1 of this reply) and a change to the UT Rules concerning rule 22A of the UT Rules respectively (addressed under Part 2), concerning a special procedure for providing notice of a refusal of permission to appeal in an asylum case.

11. A copy of the Consultation is available at:

    https://www.gov.uk/government/consultations/possible-changes-to-the-first-tier-tribunal-immigration-and-asylum-chamber-rules-and-the-upper-tribunal-rules

12. There was a single response to the consultation, from the Immigration Law and Practitioners' Association ("ILPA").

PART 1: APPEALS AGAINST DECISIONS TAKEN UNDER THE EU SETTLEMENT SCHEME

Background to the proposed changes: Citizens' Rights Appeals

13. The EU Withdrawal Agreement made provision for certain EU citizens and their family members to continue to enjoy rights to reside in the United Kingdom following the conclusion of the "implementation period" following the UK's withdrawal from the European Union, which came to an end at 11.00PM on 31 December 2020. The Secretary of State for the Home Department ("the Secretary of State") established the EU Settlement Scheme ("the EUSS") under the Immigration Rules in order to give effect to those obligations. The relevant rules are primarily in Appendix EU, Appendix EU (Family Permit) and Appendix AR (EU) of the Immigration Rules.

14. The Secretary of State made the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the 2020 Regulations") to enable appeals against decisions to refuse an application made under the EUSS to be heard by the First-tier Tribunal.

Such appeals are allocated to the FTTIAC, with onward appeals to the Upper Tribunal (IAC).

15. The 2020 Regulations made amendments directly to the FTTIAC Rules concerning the time limits for appealing against a decision taken under the EUSS. Those amendments differentiated between appellants who had applied for administrative review of the refusal decision, and those who had not. The amendments were made to rule 19 of the FTTIAC Rules, through the insertion of paragraphs (3A) to (3E). Where relevant, rule 19 in its current form now provides:

> **Notice of appeal**
>
> 19.—
>
> (1) An appellant must start proceedings by providing a notice of appeal to the Tribunal.
>
> (2) If the person is in the United Kingdom, the notice of appeal must be received not later than 14 days after they are sent the notice of the decision against which the appeal is brought.
>
> (3) If the person is outside the United Kingdom, the notice of appeal must be received—
>
> > (a) not later than 28 days after their departure from the United Kingdom if the person—
> >
> > > (i) was in the United Kingdom when the decision against which they are appealing was made, and
> > >
> > > (ii) may not appeal while they are in the United Kingdom by reason of a provision of the 2002 Act; or
> >
> > (b) in any other case, not later than 28 days after they receive the notice of the decision.
>
> (3A) But paragraphs (2) and (3) do not apply in relation to the bringing of an appeal against a citizens' rights immigration decision.
>
> "A citizens' rights immigration decision" is a decision which can be appealed against under the 2020 Regulations.
>
> (3B) The notice of appeal in relation to an appeal against a citizens' rights immigration decision must be received—
>
> > (a) if the person is in the United Kingdom, not later than 14 days after the appellant is sent the notice of the decision;
> >
> > (b) if the person is outside the United Kingdom, not later than 28 days after the appellant receives the notice of the decision.
>
> But this paragraph is subject to paragraph (3D).
>
> (3C) Paragraph (3D) applies where—
>
> > (a) a person ("P") applies for an administrative review of a citizens' rights immigration decision ("the original decision") under the relevant rules, and

(b) P had not, before P receives notice of the decision on administrative review, started proceedings in relation to the original decision.

(3D) Where this paragraph applies, the notice of appeal against the original decision must be received—

(a) if P is in the United Kingdom, not later than 14 days after P is sent the notice of the decision on administrative review;

(b) if P is outside the United Kingdom, not later than 28 days after P receives the notice of the decision on administrative review.

(3E) In this rule, "the relevant rules" means—

(a) Appendix AR (EU) and Appendix AR (administrative review) to the immigration rules, or

(b) the Citizens' Rights (Frontier Workers)(EU Exit) Regulations 2020 (see regulations 21 to 23 of those Regulations).

16. Full details relating to the process for appealing against EUSS refusal decisions are set out at paragraph 14 and following of the Consultation.

Impact of an application for administrative review on bringing an appeal before the First-tier Tribunal

17. The TPC understands that in making the above amendments to rule 19, the Secretary of State primarily intended to enable appellants to be able to elect whether to appeal against a refusal decision within the usual 14 or 28 day period, or, alternatively, to request an administrative review, followed by the possibility of an appeal in the event the administrative review is unsuccessful – but only once the administrative review had been unsuccessful.

18. For the reasons set out in the Consultation, the TPC understands the Home Office's working understanding of rule 19(3A) to (3E) to be that, if an appellant applies for administrative review having not brought a parallel appeal under paragraph (3B) within the initial 14 or 28 day period, the appellant's right of appeal to the First-tier Tribunal cannot be exercised until a decision had been taken by the Home Office on the administrative review. In practice, however, that construction of the rules was leading to significant delays in appellants being able to secure judicial redress due to a Home Office backlog in determining administrative review applications, which are (the TPC was told) taking between 12 to 18 months on average. Consequently, by pursuing an administrative review application in lieu of an appeal, unsuccessful EUSS applicants were being deprived of the possibility of accessing speedy judicial resolution of their case. In the view of the Home Office, those who pursued administrative review in this way would be unable to bring proceedings before the First-tier Tribunal until the Home Office had determined their administrative review applications, unless they applied for a lengthy extension of the time limit prescribed by rule 19(3B).

19. In the view of the Home Office, the rules should be amended to enable an EUSS appellant who is outside the initial 14 or 28 day appeal period to withdraw their administrative review, and thus to appeal against the original EUSS decision once a notice accepting their withdrawal is issued by the Home Office. The Home Office

asked the TPC to amend the FTTIAC Rules to that effect. The rule change proposed by the Home Office was as follows, with the proposed changes in *italics*:

> (3D) Where this paragraph applies, the notice of appeal against the original decision must be received—
>
> > (a) if P is in the United Kingdom, not later than 14 days after P is sent the notice of the decision on administrative review *or the notice accepting withdrawal*;
> >
> > (b) if P is outside the United Kingdom, not later than 28 days after P receives the notice of the decision on administrative review *or the notice accepting withdrawal*.

20. As set out in the Consultation, the TPC queried whether the premise of the Home Office's understanding of the operation of paragraph (3D) was correct. Paragraphs 28 to 31 of the Consultation put it in this way:

> 28. While the TPC can see the superficial force in this constriction, it queries whether it is a correct construction of the rules as presently drafted. The TPC notes that, if an administrative review decision has not been sent to a prospective appellant, any notice of appeal submitted before that date will, by definition, be "not later than 14 days after P is sent the notice of the decision." It could be said to be a considerable period *before* the expiration of that 14 day period. The fact that the 14 day period has not yet started does not, on this view, prevent a prior date from being regarded as *before* the expiration of that 14 day period.
>
> 29. The TPC notes that, ordinarily, the engagement of a time limit prescribed in such terms would be dependent upon the specified 'trigger event' taking place, thereby lending force to the Home Office's construction. The present scenario would appear to be different. The right of appeal is triggered by, and attaches to, the underlying EUSS decision, not the administrative review. The unsuccessful applicant in such circumstances continues to enjoy a substantive right of appeal against the underlying EUSS decision. Nothing in the current rules expressly states that the time limit for bringing an appeal does not start until a decision on an appellant's administrative review has been taken. Clear wording would be required to deprive a prospective appellant of the substantive rights they otherwise enjoy by virtue of the Withdrawal Agreement or under the 2020 Regulations.
>
> 30. The TPC notes that if its alternative construction of paragraphs (3D) and (3E) is correct, it would mean that the rules provide set time limits for appellants who have not applied for administrative review, and potentially much longer time limits (particularly given current EUSS administrative review processing times) for those who have applied for administrative review. Moreover, while the Secretary of State's policy intention appears to have been to encourage unsuccessful applicants to pursue administrative review in lieu of appeals, the effect of the rule changes already made to rule 19 may well have been to provide for a parallel right of appeal in such circumstances.
>
> 31. Whatever the correct construction of the rules, it is clear to the TPC that the ambiguity that has arisen through the amendments made by the

2020 Regulations calls into question whether the rules are "both simple and simply expressed". If the Home Office's construction is correct, appellants should not be restricted from seeking an appeal because they have previously sought administrative review. There should be clarity on the relationship between an application for administrative review and the exercise of a right of appeal under the 2020 Regulations.

21. In the Consultation, the TPC proposed to use the terminology of "*within* 14 [or 28] days". See paragraph 32:

> 32. To achieve this clarity, the TPC proposes to amend "not later than 14 days" to "*within* 14 [or 28] days". By using "*within* 14 days", a notice of appeal received outside that period, whether before or after it will not be valid, either because it will be premature, or late.

22. The TPC also proposed that the trigger event for the engagement of the time limit within which to provide a notice of appeal should not be the Home Office issuing a notice of withdrawal, but the appellant informing the Home Office that the administrative review was withdrawn; see paragraph 34.

23. Against that background, the TPC's proposed amendments to rule 19(3D) were as follows:

> (3D) Where this paragraph applies, the notice of appeal against the original decision must be received—
>
> > (a) if P is in the United Kingdom, **within** 14 days of P ***sending a notice of withdrawal of administrative review to the Secretary of State or being*** sent the notice of the decision on administrative review;
> > (b) if P is outside the United Kingdom, **within** 28 days of P ***sending a notice of withdrawal of administrative review to the Secretary of State or being sent*** the notice of the decision on administrative review.

24. The Consultation posed a number of questions which are now addressed in turn.

Question 1: Do you agree that Rule 19 needs to be amended?

Question 2: Do you agree with the TPC's proposed formulation at paragraph 35 (quoted at paragraph 23 of this paper)?

25. The sole respondent to the consultation, ILPA, disagreed with the need to amend rule 19. Doing so in the manner proposed by the TPC would be a "regressive" change, for it would materially restrict the ability enjoyed by putative EUSS appellants to submit notices of appeal as enjoyed at present. The respondent took that view because it considers the TPC's alternative construction of the rules, set out above, to be the better legal view. The respondent also considered that the proposed change would render notices of appeal received *before* the Secretary of State's decision on, or the appellant's withdrawal of, the administrative review invalid.

26. As set out above, ILPA agreed with the TPC's alternative construction of rule 19(3D) set out at para. 20, above. ILPA also agreed with the TPC's concern that an appellant should not have to wait until the Home Office had accepted a notice of

withdrawal of an administrative review before being able to submit a notice of appeal.

27. To the extent that the TPC were minded to amend the rules, ILPA proposed the following alternative drafting suggestion, with the suggested amendments underlined:

> (3B) Where a person ("P") does not apply for an administrative review of a citizens' rights immigration decision under the relevant rules, the notice of appeal in relation to an appeal against that decision must be received—
>
> (a) if P is in the United Kingdom, not later than 14 days after the appellant is sent the notice of the decision;
>
> (b) if P is outside the United Kingdom, not later than 28 days after the appellant receives the notice of the decision.
>
> (3C) Where a person ("P") applies for an administrative review of a citizens' rights immigration decision ("the original decision") under the relevant rules, the notice of appeal against the original decision must be received—
>
> (a) if P is in the United Kingdom, not later than 14 days after P is sent the notice of the decision on administrative review;
>
> (b) if P is outside the United Kingdom, not later than 28 days after P receives the notice of the decision on administrative review.

28. ILPA suggested the above amendments in order to clarify that there are only two options when appealing against a decision under the EUSS; an appeal, or an administrative review view, followed (if necessary) by an appeal. The proposal preserves the current approach whereby, on ILPA's view, the time limit for giving a notice of appeal runs throughout the entire period for which an administrative review application is pending with the Secretary of State.

Response of the TPC

29. By way of a preliminary observation, the TPC notes that the possible constructions of rule 19(3A) to (3E) outlined in the Consultation are not the subject of any reported guidance from the Upper Tribunal or above. Nor has the TPC adopted its own final view as to the meaning of the provisions inserted into the FTTIAC Rules by the Secretary of State. Rather, as noted in the Consultation, the fact that there are at least two opposing constructions of the rule in question means that the statutory mandate for the rules to be "simple and simply expressed" may not be met by the rules in their current form. The TPC considers that, having identified this potential ambiguity, it would be inappropriate to leave the matter unresolved. This is especially so in the context of an appeal regime established to give effect to the UK's international obligations under the EU Withdrawal Agreement. When an appeal may be brought may also be significant for the purposes of section 3C(2)(ca) of the Immigration Act 1971. The TPC wishes to bring clarity to this part of the FTTIAC Rules. Doing nothing is, therefore, not an option.

30. It is also the view of the TPC that prospective appellants challenging an EUSS refusal decision should not be in a procedurally more advantageous situation than other appellants simply on account of having applied for administrative review,

which is the consequence of the alternative construction of the current rule 19(3A) to (3E).

31. In the TPC's view, a prospective EUSS appellant who has applied for administrative review should not enjoy the ability to submit a notice of appeal at any time before an administrative review decision is taken, other than doing so in the initial 14 or 28 day period (subject to an extension of time in the usual way). The TPC sees no good reason for prospective EUSS appellants who (i) have not appealed within the initial 14 or 28 day period, and (ii) who have applied for administrative review, to be able to submit a notice of appeal *at any point before*, and up to 14 or 28 days after, a decision on the administrative review is taken (or the administrative review application is withdrawn). If that were so, an EUSS appellant would enjoy an unencumbered period of up to 18 months within which to submit a notice of appeal, on what the TPC understands to be current EUSS administrative review processing times.

32. Turning to ILPA's suggested drafting, the TPC agrees that the FTTIAC rules should clarify that there are only two options when appealing against an EUSS decision, and to that extent agrees with part of the underlying premise of ILPA's suggested drafting.

33. The TPC considers that, upon receiving an EUSS refusal decision, the individual concerned should be required to submit a notice of appeal within the usual 14 or 28 days (subject to an extension of time with permission). Merely submitting an application for administrative review within the initial 14 or 28 day period should not affect the appellant's ability to submit a notice of appeal at that time; the appeal would be in-time, and there is no reason for the rules to prevent an appellant from exercising the underlying right of appeal that would be engaged. From the perspective of the TPC, there does not appear to be any objection to an appellant *additionally* pursuing administrative review in that initial 14 or 28 day period, as the rules presently permit; it is a matter for the Home Office as to whether it accepts such applications. The concern of the TPC is for appellants to be subject to simple and simply expressed time limits within which they may fairly submit a notice of appeal. As set out below, the rules permit this to take place and the TPC cannot see a reason to depart from that approach.

34. The TPC considers that where an individual has applied for administrative review and the window for submitting a notice of appeal against the original refusal decision has closed (that is, after 14 or 28 days as the case may be), the ability to submit a notice of appeal against the underlying EUSS decision should be dependent upon the individual (i) withdrawing the administrative review, (ii) receiving a decision on the administrative review, or (iii) submitting an appeal "out of time", with permission.

35. The TPC is not persuaded that ILPA's proposed drafting would satisfactorily achieve this goal, for the following reasons.

36. First, it does not address the ambiguity arising from the formulation "not later than 14 [or 28] days after…"

37. Secondly, the proposed wording of paragraph (3B) does not cater for the fact that the time limits for applying for administrative review of EUSS decisions may be (and are currently) longer than the 14 day period applicable to in-country notices of appeal. Put another way, although the proposed paragraph (3B) is engaged where P "does not apply" for an administrative review, whether P has – or has not –

applied for administrative review could be a future event which does not have to take place until *after* the standard 14 day period to bring an in-country appeal (the TPC notes that appellants in detention are subject to a shorter time limit for EUSS administrative review applications, but that possibility alone cannot cure this defect). The TPC notes that the rules in their current form avoid this difficulty by virtue of rule 19(3C)(b): paragraph (3D) is only engaged "where P had not, before P receives notice of the decision on administrative review, started proceedings in relation to the original decision…" By definition, where P *had* started proceedings before the Tribunal against the refusal decision (even where P had also applied for administrative review: see paragraph (3C)(a)), paragraph (3D) is not engaged, and the appeal would proceed as normal.

38. Thirdly, the proposed paragraph (3C) would prevent an appellant from pursuing a parallel appeal and administrative review during the initial 14 or 28 day period currently enjoyed by EUSS appellants. As set out above, the TPC has no objection to an appellant additionally pursuing administrative review with the Home Office, as the rules expressly permit at present.

39. The TPC accordingly proposes to retain the approach suggested in the Consultation. Far from being "regressive", the proposed amendments to paragraph (3D) would clarify that prospective EUSS appellants are in the same position as all other appellants before the FTTIAC, namely subject to clearly defined time limits within which to commence proceedings, rather than being subject to an open-ended and potentially lengthy period within which an appellant is at liberty to submit a notice of appeal at any time. If the rules *did* permit such an open-ended approach for EUSS appellants in isolation, they would be neither fair (for one class of appellant would enjoy lengthy time limits without parallel elsewhere), nor would they ensure that proceedings are handled quickly and efficiently. Such an approach would be anathema to the overriding objective to deal with cases fairly and justly. There is no reason for EUSS appellants who have applied for administrative review to be favoured in such a unique and advantageous way when compared to other users of the FTTIAC.

40. The TPC does, however, consider that one amendment is required to its proposed new paragraph (3D). As noted at paragraph 32 of the Consultation (quoted at paragraph 21, above), the term "within" could invalidate a notice of appeal received *before* the notice withdrawing the administrative review, or the notice of decision on it. On reflection, the TPC considers that that approach is not right. It should be clear to both the tribunal and the parties to litigation whether a right of appeal is engaged and may be exercised. It should not be subject to some prospective future event which may not take place before the conclusion of the 14 or 28 day period. The policy intention of the proposed amendment is to clarify that, once the initial 14 or 28 day period has expired, the trigger event for submitting the notice of appeal is the withdrawal of, or decision on, the application for administrative review; the clock starts upon the trigger event taking place, not within an anticipated period *before* it starts.

41. To that end, the TPC proposes to adopt the following formulation:

> (3D) Where this paragraph applies, the notice of appeal against the original decision must be received—

(a) if P is in the United Kingdom, **within the period of 14 days beginning with the day—**

(i) P is sent the notice of the decision on administrative review, or

(ii) P sent a notice of withdrawal of administrative review to the Secretary of State, where P has not been sent a notice of the decision on administrative review;

(b) if P is outside the United Kingdom, **within the period of 28 days beginning with the day—**

(i) P is sent the notice of the decision on administrative review, or

(ii) P sent a notice of withdrawal of administrative review to the Secretary of State, where P has not been sent a notice of the decision on administrative review.

42. The TPC notes that by using "within the period of 14 days…", the time limit for providing a notice of appeal commences on the day that P is sent the notice of the decision on administrative review or sends a notice of withdrawal to the Secretary of State. The TPC has adopted that approach to enable an appellant to provide a valid notice of appeal on the day of receipt of the decision on administrative review (or the day of sending withdrawal). The TPC chose not to replicate the approach in rule 19(2), which provides that a notice of appeal "must be received not later than 14 days *after*" a notice of the appealable decision is sent to the appellant. That is because the "not later" formulation, in the context of awaiting a decision or withdrawal of administrative review, may lead to the confusion identified in the Consultation. While it could be said that this approach will result in EUSS appellants who have pursued administrative review having less time than other appellants to provide a notice of appeal (for under rule 19(2), the 14 day time limit starts the day *after* the notice of decision, rather than *on* the day of decision), the TPC considers that there is no disadvantage to EUSS appellants in such circumstances. That is because, in contrast to all other appellants, an EUSS appellant who has pursued administrative review will have had the advantage of (a potentially lengthy) period while in receipt of the underlying appealable EUSS decision during which, because they pursued administrative review, the standard time limits for appealing that decision did run. The TPC considers that to the extent that there is any perceived disparity between EUSS appellants who pursued administrative review and those who did not arising from these changes, properly understood EUSS appellants who pursued administrative review will have enjoyed a far longer period within which to formulate grounds of appeal and prepare to commence proceedings. Moreover, in the case of an EUSS appellant who *withdraws* an application for administrative review, in contrast to most, if not all, appealable decisions under the FTTIAC Rules, such an appellant will have a degree of control over when the 14 day period for bringing proceedings commences. For these reasons, the TPC has decided to start the time limit for appealing on the day of receipt of the notice of, or withdrawal of the application for, administrative review.

Question 3: Do you have any further comments?

43. The respondent to the Consultation was concerned to ensure that "appropriate safeguards" were put in place to ensure that a person does not lose their ability to challenge an EUSS refusal if they decide to "move from challenging the refusal in an administrative review to challenge the refusal in an appeal." The TPC considers that the proposed amendments cater for these concerns. The proposed amendments would operate to re-trigger an appellant's right of appeal upon the withdrawal of an administrative review, and an appellant would be in precisely the same position they would have been in at the time the Secretary of State's decision was originally served in relation to commencing proceedings in the FTTIAC.

44. The ILPA response posited a range of scenarios where, through inaction or inadvertence, a person withdrawing an application for administrative review may 'lose' a right of appeal by failing to exercise it at the time. The TPC considers that it would be inappropriate and unnecessary to legislate for the different eventualities which may arise in such circumstances. Doing so would be unnecessarily prescriptive, and there would appear to be no need for EUSS appellants to benefit (or suffer) from such codification. Nothing in the proposed amendments would prevent a putative appellant from making an application to extend time within which to appeal if a notice of appeal was not submitted within the prescribed time limits.

45. ILPA made a number of additional comments which related to matters outside the TPC's competence, and which do not affect the proposed amendments discussed above. The TPC considers that it is important to distinguish between matters for which the Secretary of State alone is institutionally competent and responsible to address, such as the operation of the EUSS under the relevant Immigration Rules, including the conduct of administrative reviews, on the one hand, and the content of tribunal procedure rules, on the other.

Postscript: amendments to Appendix AR (EU)

46. On 7 September 2023, after the Consultation closed, the Secretary of State laid a Statement of Changes to the Immigration Rules (HC 1780) before Parliament. The changes remove the right of unsuccessful EUSS applicants to apply for administrative review through the insertion of a new paragraph AR(EU)1.4. to Appendix AR (EU):

> AR(EU)1.4. An applicant may not apply for an administrative review of an eligible decision, as defined in paragraph AR(EU)1.1., where that decision was made on or after 5 October 2023, unless it is a decision as defined in paragraph AR(EU)1.1.(i) or (j).

47. The TPC does not consider that any further changes to the FTTIAC Rules are necessary to reflect this change, for the following reasons. First, the TPC notes that the changes only apply to EUSS decisions taken on or after 5 October 2023. The amendments to the rules will not impact the existing backlog of EUSS administrative review applications which have been lodged in respect of EUSS refusal decisions taken before 5 October 2023. Secondly, there are some EUSS decisions which continue to attract the right of administrative review. Thirdly, to the extent the provisions of rule 19(3A) to (3E) make provision concerning the time limits applicable to those appellants who have applied for administrative review, by definition those rules will only be capable of being engaged where the individual concerned enjoys the underlying ability, pursuant to the relevant Immigration Rules,

to apply for administrative review in the first place: see rule 19(3E)(a). Where a failed EUSS applicant does not enjoy the right to apply for administrative review, it will simply be the case that the tribunal procedure rules concerning the impact of making an application for administrative review will be of no application to that individual.

PART 2: RULE 22A OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

48. Part 2 of the Consultation proposed to omit rule 22A from the Tribunal Procedure (Upper Tribunal) Rules 2008, following a request from the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC"). Rule 22A provides:

> **Special procedure for providing notice of a refusal of permission to appeal in an asylum case**
>
> 22A.—(1) This rule applies to a decision in an asylum case to refuse permission to appeal or to refuse to admit a late application for permission to appeal, where—
>
> (a) the appellant is not the Secretary of State; and
>
> (b) at the time the application is made the appellant is in the United Kingdom.
>
> (2) The Upper Tribunal must provide written notice of the refusal and of the reasons for the refusal ("the notice") to the Secretary of State as soon as reasonably practicable.
>
> (3) The Secretary of State must—
>
> (a) send the notice to the appellant not later than 30 days after the Upper Tribunal provided it to the Secretary of State; and
>
> (b) as soon as practicable after doing so, inform the Upper Tribunal of the date on which, and the means by which, it was sent.
>
> (4) If the Secretary of State does not give the Upper Tribunal the information required by paragraph (3)(b) within 31 days after the notice was provided to the Secretary of State, the Upper Tribunal must send the notice to the appellant as soon as reasonably practicable.

49. For full details of the background to rule 22A, and the reasons why its deletion from the rules was requested by the UTIAC, and proposed by the TPC, see paragraphs 37 to 49 of the Consultation. The TPC's views were summarised at paragraph 48:

> "48. The TPC is provisionally of the view that rule 22A ought to be removed from the Upper Tribunal Rules. It now serves no useful purpose and its only original proponent (the Home Office) no longer seeks its retention. The policy justifications which were said to support it no longer apply and there is nothing to set against the concerns expressed about such rules in the original consultation process."

<u>Question 3: Do you agree with the deletion of rule 22A from the Upper Tribunal Rules? If not, why not?</u>

<u>Question 4: Do you have any other comments?</u>

50. The sole respondent to the consultation, ILPA, supported the removal of rule 22A. The Home Office had already indicated to the TPC that it supported the removal of the rule. No other responses were received and there was thus no opposition to the removal of the provision.

51. The TPC remains of the view that it is not necessary for the provision to be retained and therefore has decided to amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to remove rule 22A.

Consultation and keeping the Rules under review

52. In summary, the TPC proposes to amend rule 19(3D) of the FTTIAC Rules in the manner proposed at paragraph 41, above, and to omit rule 22A from the Tribunal Procedure (Upper Tribunal) Rules 2008.

53. The TPC is grateful to all those who read the Consultation and for the reply received.

54. The TPC's remit includes keeping the Rules under review. Please send any suggestions for further amendments to the Rules to: TPC Secretariat, Area 5.49, 102 Petty France, London, SW1H 9A

55. Further copies of this Reply can be obtained from the Secretariat. The Consultation paper, this Reply and the Rules are available on the Secretariat's website:

https://www.gov.uk/government/organisations/tribunal-procedure-committee

ANNEX

List of Respondents

The Immigration Law and Practitioners' Association