

**March 2026**

## **Tribunal Procedure Committee**

### **Consultation on possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of applications for judicial review**

#### Introduction

1. The Tribunal Procedure Committee (“**TPC**”) is the body that makes rules to govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. It is an independent Non-Departmental Public Body, sponsored by the Ministry of Justice. Information on the TPC can be found at: [www.gov.uk/government/organisations/tribunal-procedure-committee](http://www.gov.uk/government/organisations/tribunal-procedure-committee)
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 (“**FTT**”) and the Upper Tribunal (“**UT**”). Since April 2024, the TPC has also been responsible for making rules for the Employment Tribunal.
3. Section 22(4) of the TCEA requires that the TPC’s rule-making powers be exercised with a view to securing that:
  - (1) in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done;
  - (2) the tribunal system is accessible and fair;
  - (3) proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently;
  - (4) the rules are both simple and simply expressed; and
  - (5) the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring the proceedings before the tribunals are handled quickly and efficiently.
4. The TPC seeks, among other things, to:

- (1) make the rules as simple and streamlined as possible;
  - (2) avoid unnecessarily technical language;
  - (3) enable Tribunals to continue to operate tried and tested procedures which have been shown to work well; and
  - (4) 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.

### Proposals

6. The TPC received a proposal from the President of the Upper Tribunal Immigration and Asylum Chamber (“**UTIAC**”) to consider three possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 (“**UTR**”), with the overall effect of more closely aligning the procedure in UTIAC with that of the Administrative Court in the context of applications for judicial review:
- (1) To introduce a provision in the UTR mirroring rule 54.8A of the Civil Procedure Rules (“**CPR**”), making express provision for an applicant to provide a reply to an acknowledgment of service.
  - (2) To amend rule 40(1A) of the UTR such that a decision disposing with immigration judicial review proceedings can be handed down remotely as opposed to solely at a hearing.
  - (3) To amend rule 28A of the UTR to align it with CPR 54.7, such that the copy of the claim form served on the respondent or interested party must be sealed.

### *Proposal 1: Reply to Acknowledgment of Service*

7. CPR 54.8A provides as follows:
- (1) A claimant who has been served with any acknowledgment of service in accordance with rule 54.8(2)(b)(i) may file a reply.
  - (2) Any reply must be—

- (a) filed not more than 7 days after service of the acknowledgment of service; and
    - (b) served on—
      - (i) the defendant; and
      - (ii) any person served with the claim form, as soon as practicable and in any event not later than 7 days after it is filed.
  - (3) The time limits under this rule may not be extended by agreement between the parties.
  - (4) Practice Direction 54A makes provision as to the content and length of any reply.
8. Practice Direction 54A provides that a Reply cannot without permission exceed 5 pages, and ought only to be filed when an issue not raised in the Claim Form is raised in the Acknowledgment of Service.
9. The President has suggested that the absence of a corresponding provision in the UTR has led to a lack of clarity over the position of Replies in UT practice.
10. The TPC is provisionally in agreement with the President. CPR 54.8A was added pursuant to recommendations made in the March 2021 report following the Independent Review of Administrative Law (“**the IRAL report**”). At pages 107-108, the IRAL report noted that there was a risk, in the absence of formal provision for a reply, that such material might not make its way to the judge adjudicating on whether to grant permission, and that the admissibility of evidence contained in Replies was a matter for the court’s discretion. That risked creating an inconsistency in approach. The IRAL report considered that the advantages to the court of having a greater quantity of evidence at permission stage outweighed the potential cost in terms of efficiency by having to allow claimants the time to consider the evidence contained in an Acknowledgment of Service. It recommended at paragraph 4.153 that “formal provision for a Reply, to be filed within seven days of receipt of the AOS, should be made in the CPR.”

11. The TPC's provisional view is that the arguments made in the CPR context apply in the UTR context. As it stands there is uncertainty over whether a Reply is permitted and, if so, what time and length limits apply. To that extent there is a danger of unjustified inconsistency emerging, much as identified by the IRAL report in the CPR context.
12. The TPC considers that there is no good reason in this context for there to be a divergence of practice between the Administrative Court and the UT. Its proposal would therefore be to insert a provision (potentially rule 29A) in the UTR exactly mirroring CPR 54.8A. This would be supplemented by a Practice Direction mirroring Practice Direction 54A.
13. Amending the UT Rules so as to reflect the terminology and processes in the CPR 54.8A would produce a rule in the following terms:
  - (1) An applicant who has been provided with any acknowledgment of service in accordance with rule 29 may provide a reply to the Upper Tribunal.
  - (2) Any reply must be—
    - (a) provided to the Upper Tribunal not more than 7 days after provision of the acknowledgment of service; and
    - (b) provided to —
      - (i) the respondent; and
      - (ii) any person served with the application for permission, as soon as practicable and in any event not later than 7 days after it is provided to the Upper Tribunal.
  - (3) The time limits under this rule may not be extended by agreement between the parties.
  - (4) Practice Directions may make provision as to the content and length of any reply.

Proposal 2: Handing Down Hearings

14. Tribunals have traditionally issued their decisions in writing, whereas courts traditionally gave judgments at hearings. When certain types of judicial review proceedings were transferred from the Administrative Court to the Upper Tribunal, the UTR were formulated and amended, so far as possible, to mirror the procedures in the High Court.
  
15. Whilst UT rule 40(1) permits the Upper Tribunal to give a decision orally at a hearing, therefore, rules 40(1A)-(1B) require that a decision which disposes of immigration judicial review proceedings is to be given at a hearing. Those rules state:
  - (1A) Subject to paragraph (1B), in immigration judicial review proceedings, a decision which disposes of proceedings shall be given at a hearing.
  - (1B) Paragraph (1A) does not affect the power of the Upper Tribunal to –
    - (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
    - (b) consent to withdrawal, pursuant to rule 17;
    - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
    - (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.
  
16. In the UTIAC, therefore, judicial review judgments which are reserved after a full hearing are handed down by the judge at a hearing in open court. Whilst those hearings are typically brief, they bring about an additional burden on the administrative staff and the judiciary. In contrast, as the President has noted, judgments of the Administrative Court are routinely handed down remotely in accordance with Annex 5 of the Administrative Court Judicial Review Guide. The President suggests an amendment to the UTR which would permit decisions to be handed down remotely in the UTIAC, thereby re-aligning the Upper Tribunal’s processes with those in the Administrative Court

17. Rules 40(1A)-(1B) were introduced by the Tribunal Procedure (Amendment No. 4) Rules 2013 (“**the 2013 Rules**”). Rules 40(1A)-(1B) must be read in conjunction with rules 44(4A)-(4B), also introduced by the 2013 Rules, which deal with applications for permission to appeal and provide:
  - (4A) Where a decision that disposes of immigration judicial review proceedings is given at a hearing, a party may apply at that hearing for permission to appeal, and the Upper Tribunal must consider at the hearing whether to give or refuse permission to appeal.
  - (4B) Where a decision that disposes of immigration judicial review proceedings is given at a hearing and no application for permission to appeal is made at that hearing –
    - (a) the Upper Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal...
18. As set out in the Explanatory Memorandum to the 2013 Rules, the intention of the amendments, taken together, was to “mirror the procedure applicable in the High Court as closely as possible and accordingly provide that permission to appeal Upper Tribunal decisions in relation to immigration judicial reviews will be dealt with at the hearing giving the decision.”
19. Rules 44(4A)-(4B) in turn have their origins in amendments brought about by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2012 (“**the 2012 Rules**”). The relevant amendments in the 2012 Rules were more limited in scope and did no more than allow a party to apply for permission to appeal at a hearing. The position prior to the 2012 Rules was that an application for permission to appeal had to be made in writing following the publication of written reasons for the decision.
20. The 2012 Rules followed the judgment of the Court of Appeal in *R (on the application of NB Algeria) v Secretary of State for the Home Department* [2012] EWCA Civ 1050. There, the pre-2012 position was described as “inconvenient” and “quite different” from the practice of the Administrative Court, where

permission to appeal can be applied for “orally or in writing” as soon as the judicial review claim is disposed of.

21. The TPC therefore takes the provisional view that the rationale for requiring an oral hearing when immigration judicial review proceedings are disposed of has, from the beginning, been to align the practice of the UTIAC with that of the Administrative Court. The TPC considers that this rationale only had purchase when it was the standard practice of the Administrative Court to hand down judgments at an oral hearing. It therefore no longer applies today given that, since the pandemic, judgments of the Administrative Court are typically handed down remotely. That procedure was formalised in practice guidance given by Swift J in July 2024, available [here](#). Amending rules 40(1A)-(1B) would therefore more closely align procedure between the UTIAC and the Administrative Court (the original objective of those Rules), and would in the TPC’s provisional view save judicial time and increase efficiency in the UTIAC.
22. The TPC considers that it is desirable for express provision to be made in the UTR as to the means by which a decision disposing of immigration judicial review proceedings can be given. Its provisional view is that this might be achieved straightforwardly, by deleting rule 40(1A). The deletion of that provision would remove the *requirement* that a decision disposing of immigration judicial review proceedings be given at a hearing. By rule 40(1), however, the Upper Tribunal would nevertheless be *permitted* to give a decision orally at a hearing.
23. The deletion of UTR rule 40(1A) would also, in the TPC’s provisional view, necessitate the deletion of rule 40(1B). That provision, which ensures that the tribunal is able in certain circumstances to dispose of an application for judicial review without a hearing, would become otiose upon the deletion of rule 40(1A).
24. Any such amendment also requires the TPC to consider the procedure governing applications for permission to appeal from UTIAC to the Court of Appeal (or Court of Session etc). As above, special provision is currently made at rules 44(4A)-(4B) for such applications to be determined upon the giving of judgment at a

hearing. Those provisions apply equally to the permission and substantive stages of judicial review.

25. The TPC is aware that judges in UTIAC invariably give oral decisions on applications for permission to apply for judicial review. When such a decision is given at a hearing, the TPC considers there to be a compelling justification for the retention of the obligations in rule 44(4A)-(4B). UTIAC considers a large number of applications for permission to apply for judicial review and it is desirable for those cases to be finally concluded on the day of the hearing. Were provision to be made for an applicant to seek permission to appeal in writing at some point after a permission hearing, the TPC anticipates the creation of delays and backlogs in UTIAC's currently increasing workload.
26. The TPC provisionally considers that there is proper justification for permitting a party to make a written application for permission to appeal if the Upper Tribunal's decision is not given at a hearing, however. The number of cases which proceed to a hearing post-permission is comparatively small and it would impose a limited additional burden on the judiciary to consider a written application for permission to appeal after giving a decision in writing.
27. The TPC's provisional view, therefore, is that the obligations in rule 44(4A)-(4B) should remain in place. It also considers that additional provision should be made in rule 44 for applications for permission to appeal when a decision which disposes of immigration judicial review proceedings is not given at a hearing. That could be achieved by the insertion of a provision in terms such as these:

(4BA) Where a decision that disposes of immigration judicial review proceedings is given in writing, a party may apply for permission to appeal by making a written application which must be received by the Upper Tribunal no later than twelve working days after the Upper Tribunal sent its written decision to the party making the application.

28. The TPC notes that the equivalent period in the Administrative Court's processes is 21 days, and it has considered whether UTIAC's timescale should mirror that. The TPC's provisional view, however, is that the timescale should instead mirror the timescale which applies to applications for permission to appeal when UTIAC sits in its appellate capacity. That timescale is already familiar to immigration practitioners and the adoption of a uniform timescale is likely to minimise confusion.

Proposal 3: Service of Claim Form

29. UTR, rule 28A provides as follows:

- (1) The Upper Tribunal must not accept an application for permission to bring immigration judicial review proceedings unless it is either accompanied by any required fee or the Upper Tribunal accepts an undertaking that the fee will be paid.
- (2) Within 9 days of making an application referred to in paragraph (1), an applicant must provide –
  - (a) a copy of the application and any accompanying documents to each person named in the application as a respondent or an interested party; and
  - (b) the Upper Tribunal with a written statement of when and how this was done.

30. Rule 28A can be contrasted with CPR 54.7, which provides:

The claim form must be served on –

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party,

within 7 days after the date of issue.

31. The President has noted concerns expressed by the Government Legal Department (“GLD”) that, notwithstanding that the UT makes clear to applicants

that only sealed claim forms should be served upon a respondent or interested party, the lack of a legal requirement for a sealed claim form creates some ambiguity. The GLD is concerned about claim forms being served upon them which have not been lodged with the UT at all. The President suggests that any ambiguity could be resolved by aligning the UTR more closely with the CPR in this respect.

32. As the requirement for service under the CPR runs from the date of issue, any claim form served pursuant to CPR 54.7 will by definition be sealed. There is no parallel requirement in the UTR for the application to be sealed as the time limit begins to run only from when the application is made.
33. The UTIAC1 form makes a number of references to a 'requirement' for the copy of the application form to be sealed for the purposes of service. Under the section of the form entitled 'Service', it reads as follows (emphasis in original):

**Within 9 days of making the application** for judicial review you must:

- (1) Provide a copy of the **sealed** form (stamped), together with any supporting documents to each Respondent and interested party in your case; and
  - (2) Provide a written statement to the Upper Tribunal explaining how and when you provided the documents to the other parties. Use form **UTIAC2** for this.
34. The first page of UTIAC2, which is the form used to satisfy rule 28A(2), in turn provides as follows (emphasis in original):

You must provide a **sealed** (stamped) copy of your application or form **UTIAC1** and any supporting documents to the respondent and any interested party. The tribunal will provide to you a **sealed** (stamped) copy, with the case reference number, once your application has been issued.

**Failure to comply with this requirement may lead to your application for judicial review being struck out.**

35. The forms themselves therefore clearly envisage a requirement for sealing for the purposes of valid service despite there being no such requirement in the UTR.
36. The TPC's provisional view is that rule 28A ought to be amended so as to make explicit the requirement for a sealed application form for the purposes of service. The TPC considers, as with the other suggested amendments, that it is desirable for UT practice to be aligned with that of the Administrative Court unless there are good reasons to the contrary. At this stage, the TPC believes that there is no sensible reason for any divergence. When a respondent is served with an unsealed claim form, there is no way of knowing – save for manually querying the matter with the UT – whether the application has, in fact, been made. Aside from generating inefficiency, the TPC is concerned that there is some potential for abuse: an applicant can serve an application form on a respondent without ever having lodged it with the UT.
37. The TPC's provisional view is that directly mirroring the language of CPR 54.7 will not be possible. CPR 54.7 relies on the concept of the claim form being 'issued' by the court. There is no parallel concept of the 'issuing' of applications in UT procedure in relation to immigration judicial review proceedings. That is because rule 28A puts the onus on the applicant to provide the application form.
38. The TPC therefore considers that the best way to align the CPR and the UTR in practice is to link the time limit referred to in rule 28A to the date at which the applicant is provided with a sealed application form by the UT, and make specific provision for the applicant to provide the other relevant parties with a sealed application form. As revised rule 28A(2) would then provide as follows:

(2) Within 9 days of the sealed application being provided to the applicant by the Upper Tribunal, the applicant must provide –

- (a) a copy of the sealed application...

39. The TPC presently considers that the word “sealed” would not need to be defined in the UTR, given that there is no such definition in the CPR (save for in its glossary, which does not provide any legal meaning to the words defined therein).

### Questions

40. The TPC invites responses to the following questions:

**Question 1:** Do you agree that the rules governing the conduct of judicial review proceedings in the Upper Tribunal should reflect those which govern the conduct of judicial review proceedings in the Administrative Court?

### Proposal 1

**Question 2:** Do you agree that provision should be made in the Tribunal Procedure (Upper Tribunal) Rules 2008 for an applicant to reply to an Acknowledgement of Service?

**Question 3:** If so, do you agree that provision should be made in the way suggested in this consultation paper?

### Proposal 2

**Question 4:** Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to remove the requirement that a decision which finally disposes of immigration judicial review proceedings must be given at a hearing?

**Question 5:** If so, do you agree that rules 40 and 44 should be amended in the way suggested in this consultation paper?

### Proposal 3

**Question 6:** Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to require an applicant for judicial review to provide a sealed copy of any application for judicial review to a respondent?

**Question 7:** If so, do you agree that the change should be effected by amending rule 28A in the manner suggested in this consultation paper?

**Question 8:** Do you have any other observations about these proposals?

### Responses

41. Please reply using the response questionnaire template.

42. Please send your response by 12 June 2026 to one of the following:

Email: [tpcsecretariat@justice.gov.uk](mailto:tpcsecretariat@justice.gov.uk)

Post: Tribunal Procedure Committee  
Administration of Justice Directorate  
Policy, Communications and Analysis Group  
Ministry of Justice  
Post Point: Area 7.55  
102, Petty France  
London  
SW1H 9AJ

43. Extra copies of this consultation document can be obtained using the above contact details or online at: <http://www.justice.gov.uk/about/moj/advisory-groups/tribunalprocedure-committee/ts-committee-open-consultations>