



TRIBUNALS
JUDICIARY

PRACTICE STATEMENT

**FRESH CLAIM JUDICIAL REVIEWS IN THE IMMIGRATION AND ASYLUM
CHAMBER OF THE UPPER TRIBUNAL
ON OR AFTER 29 APRIL 2013**

1. Introduction

- 1.1 This Practice Statement supplements the Senior President's Practice Direction (PD) in respect of applications for judicial review of fresh claim decisions within the meaning of the Direction made by the Lord Chief Justice 17 October 2011 (hereafter the proceedings).¹
- 1.2 The Direction and the PD are available on the Senior President's web site at: <http://www.judiciary.gov.uk/publications-and-reports/practice-directions/tribunals/tribunals-pd>
- 1.3 References in this statement to the Upper Tribunal Rules are to the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended, available at the same location.

2. Permission applications

Lodging

- 2.1 Applications for permission to bring the proceedings, whether commenced in the High Court or the Upper Tribunal, are submitted to the Administrative Court Office in London and the Regional Centres and transferred to Upper Tribunal Field House for decision. The relevant forms for an application to the Upper Tribunal may be found at <http://www.justice.gov.uk/forms/hmcts/upper> where there is also some guidance on their completion and submission.

Considering permission

- 2.2 The application for permission will not be considered before the time for lodging an Acknowledgment of Service (AOS) has expired² unless:-
- i. the Respondent has indicated that no AOS will be lodged or has asked for urgent consideration of the application;
 - ii. an application for urgent relief to prevent removal has been refused and the judge considers it is appropriate to refuse the application for permission at the same time.

¹ For the content of the application see UT rule 28(4)

² 21 days after sending see UT rule 29(1)

- 2.3 An application for an extension of time to lodge the application will be determined at the same time as the application for permission and permission will not be granted unless extension of time is allowed³.

Extension of time

- 2.4 An application for an extension of time will be refused unless:-
- i. Satisfactory written reasons are given why the application was not made promptly and in any event within three months of the decision under challenge. In deciding what is “prompt” regard may be had to any relevant time limits for statutory appeals.
 - ii. Any factual assertion made in the explanation is supported by evidence or an explanation of why such evidence has not been lodged.

No jurisdiction

- 2.5 A judge considering an application for permission must transfer the application to the Administrative Court if relief is claimed other than relief that can be granted by the Upper Tribunal under the Direction of the Lord Chief Justice⁴.

Permission decisions

- 2.6 Where the Upper Tribunal is entitled to grant the relief sought, the Upper Tribunal judge may, on considering the permission application:
- i. Grant the application.
 - ii. Grant the application on some grounds and refuse it on others.
 - iii. Adjourn the application for permission to an oral hearing.
 - iv. Refuse the application.
- 2.7 Where the application is refused the judge may also:
- i. Make any order for costs of the Acknowledgement of Service as is appropriate in all the circumstances.
 - ii. Curtail the period for renewal of the application from the 9 days permitted under the Upper Tribunal Rules⁵. In order to reflect the practice of the Administrative Court CPR 54.12 the Upper Tribunal judge will normally curtail time for renewal to five working days and may curtail time to two working days where there is a compelling case for expedition.
 - iii. Direct that the application is wholly without merit and if so that any renewal of the application shall not operate as a bar on removal.
- 2.8 The judge must give brief written reasons for refusing the application or any part of it⁶ and may give reasons for the other decisions made if considered appropriate to identify the issues or otherwise assist the preparation for the next hearing.

³ UT rule 28(7)

⁴ TCEA s. 18(3)

⁵ UT rule 30(5)

⁶ UT rule 30(1) (b)

Renewed applications

- 2.9 Where a judge refuses the application on some or all grounds without a hearing, the applicant may apply by notice in writing for that decision to be renewed at an oral hearing.
- 2.10 Such notice must explain:-
- i. The grounds on which permission is being renewed;
 - ii. The basis on which the application is renewed; and
 - iii. The response the applicant makes to any reasons given by the judge in refusing permission.
- 2.11 A renewed application for permission will be listed promptly in a permission list at Field House, London. Save with the parties' consent or in urgent or exceptional cases, at least two days notice of such a hearing will be given to the applicant and any party that has served an AOS⁷.
- 2.12 Legal representatives based outside London who wish to be heard by video link shall notify the Upper Tribunal in good time, giving details of the proposed arrangements. The Upper Tribunal will have regard to the guidance to be found in CPR 32PD32 (see in particular paragraphs 8-14 of Annex 3).
- 2.13 A renewed permission application shall be assigned a time estimate of 45 minutes, unless either party has previously applied to the Upper Tribunal explaining:-
- i. why a longer hearing is necessary;
 - ii. what steps have or will be taken to keep the extension of time to the minimum necessary; and
 - iii. giving a realistic revised time estimate.

Decisions on renewed application

- 2.14 If permission is refused, at the conclusion of the hearing of the application, or at such other time promptly thereafter as the judge directs, the judge shall:
- i. deliver a judgment giving the decision and explaining in summary terms why the application or any part of it has been refused⁸;
 - ii. arrange for service of a written notice of the decision refusing permission⁹;
 - iii. consider any costs orders to be made arising from the application;
 - iv. consider any application for a stay on removal pending an application made to the Court of Appeal for permission to appeal.

In addition the judge may curtail the time for applying in writing to the Upper Tribunal for permission to appeal against the refusal of permission to the Court of Appeal¹⁰.

⁷ UT rule 36 (a) and (b).

⁸ UT rule 40 (1)

⁹ UT rule 40 (2)

¹⁰ For the UT's general case management powers see UT rule 5(3). See also UT rule 44(4A).

- 2.15 The Tribunal's permission is required if an applicant seeks to rely on grounds other than those for which the applicant has been given permission to proceed.
- 2.16 When a written notice is served refusing permission on all grounds at the oral hearing the decision is a decision of the Upper Tribunal which disposes of proceedings.
- 2.17 An application for permission to appeal to the Court of Appeal against a refusal of permission to bring judicial review proceedings shall be made orally at the hearing or in writing¹¹.
- 2.18 Having regard to the subject matter of the application and the practice of the Administrative Court, at the conclusion of the renewed permission hearing the Upper Tribunal judge will normally have exercised case management powers to curtail the period of one month¹² for making an application for permission to appeal to the Court of Appeal against the Upper Tribunal's refusal of permission to six working days from the date of sending of the written decision refusing permission. The Upper Tribunal judge will take into account that reasons will already have been given orally at the hearing.

3. Urgent applications

- 3.1 An application for urgent consideration (an "urgent application") under 11.1 of the Senior President's PD, can only be considered by a judge of the Upper Tribunal on the papers where the judicial review proceedings have been issued. Applications for urgent relief made before an application for judicial review has been made should accordingly be made to the Administrative Court.
- 3.2 An application for a stay on removal or an injunction must be accompanied by statement from the applicant's legal representative (i) explaining why the application is made urgently; (ii) stating when the decision under challenge came to the claimant's notice and justifying any delay since that date; and (iii) certifying that there is nothing in the application that the legal representative does not consider to be properly arguable. Such applications must be served on the respondent together with the application for permission.
- 3.3 An urgent application lodged after 9.30am and before 4.15pm on a working day will be considered by a judge of the Upper Tribunal that day. An urgent application lodged outside these times will be referred to a duty judge of the Queen Bench Division to consider, acting as a judge of the Upper Tribunal.
- 3.4 Special arrangements have been made for applications lodged at centres outside London for urgent applications made before permission is granted to be considered by judges at those centres before the case is transferred to Field House.
- 3.5 An urgent application for a stay on removal will be considered on the papers by a judge of the Upper Tribunal, unless the judge adjourns the application for an oral hearing at which both sides can make submissions.

¹¹ UT rule 44 (1), (4A)

¹² UT rule 44 (4)

- 3.6 An application for an injunction requiring the respondent to return a person who has been previously removed from the United Kingdom may only be made after an oral hearing of which the respondent has notice.
- 3.7 Where a judge considers an urgent application on the papers, and concludes that further information is needed from the respondent, the judge may telephone the Home Office and seek the further information. A note shall be kept of any information supplied.
- 3.8 Where an urgent application is granted, the judge shall forthwith draw up an order and give short reasons for it that shall be sent to both parties.
- 3.9 Where an urgent application is refused, the judge shall give short written reasons for the decision and shall append to those reasons any material information obtained from the Home Office.
- 3.10 An urgent application that is refused on the papers may be renewed orally to a judge of the Upper Tribunal upon application being made promptly to the Tribunal and notice given to the respondent. The Tribunal will list such application as soon as practicable in all the circumstances of the case.
- 3.11 A refusal of an oral urgent application is final.
- 3.12 The provisions of paragraphs 2.14 to 2.18 of this Guidance Note shall, so far as relevant,) apply to urgent applications.

4. Costs

- 4.1 Where a judge of the Upper Tribunal makes an order that the applicant is to pay a sum to the respondent in respect of the acknowledgment of service or the costs of resisting an urgent application, pursuant to rule 10(3)(a) of the Upper Tribunal Rules and there has been no prior opportunity on the paying party to make representations or to have an inquiry into that party's means, the order takes effect as a provisional order subject to representations to be made in writing within 10 working days of the order.
- 4.2 Where no representations have been received within the time specified in the order, the order for costs shall become absolute. In other cases, the representations shall be referred promptly to the judge making the order or such other judge as is available for determination.

Sir Jeremy Sullivan
Senior President of Tribunals

26 April 2013