



TRIBUNALS
JUDICIARY

PRACTICE DIRECTIONS

FRESH CLAIM JUDICIAL REVIEW IN THE IMMIGRATION AND ASYLUM CHAMBER OF THE UPPER TRIBUNAL

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PART 1

PRELIMINARY

1. Interpretation

1.1 In these Practice Directions:-

“applicant” has the same meaning as in the UT Rules;

“the application” means the written application under rule 28 for permission to bring judicial review proceedings;

“fresh claim proceedings” has the same meaning as in the UT Rules;

“party” has the same meaning as in the UT Rules;

“respondent” has the same meaning as in the UT Rules;

“the Tribunal” means the Immigration and Asylum Chamber of the Upper Tribunal;

“UKBA” means the UK Border Agency of the Home Office;

“UT Rules” means the Tribunal Procedure (Upper Tribunal) Rules 2008 and “rule”, followed by a number, means the rule bearing that number in the UT Rules.

PART 2

SCOPE

2. Scope

2.1 Parts 3 and 4 of these Practice Directions apply to fresh claim proceedings.

2.2 Part 5 of these Practice Directions applies to proceedings to which Part 3 applies, where:-

(a) a person has been served with a copy of directions for that person’s removal from the United Kingdom by UKBA and notified that Part 5 applies; and

(b) that person makes an application to the Tribunal or a court for permission to bring judicial review proceedings or to apply for judicial review, before the removal takes effect.

- 2.3 In the case of proceedings transferred to the Tribunal by a court, the Tribunal will expect the applicant to have complied with all relevant Practice Directions of that court that applied up to the point of transfer. In the event of non-compliance, the Tribunal will make such directions pursuant to rule 27(1)(b) as are necessary and which may, in particular, include applying provisions of these Practice Directions.

PART 3

GENERAL PROVISIONS

The application to bring judicial review proceedings

3. Form of application

- 3.1 The application must be made using the form displayed on the Upper Tribunal's website at the time the application is made.

4. Additional materials to be filed with the application

- 4.1 Without prejudice to rule 28, the application must be accompanied by:-
- (a) any written evidence on which it is intended to rely (but see paragraph 4.2 below);
 - (b) copies of any relevant statutory material; and
 - (c) a list of essential documents for advance reading by the Tribunal (with page references to the passages relied on).
- 4.2 The applicant may rely on the matters set out in the application as evidence under this Practice Direction if the application is verified by a statement of truth.

5. Bundle of documents to be sent etc. with the application

- 5.1 The applicant must file two copies of a paginated and indexed bundle containing all the documents required by rule 28 and these Practice Directions to be sent or delivered with the application.

6. *Permission without a hearing*

- 6.1 The Tribunal will generally, in the first instance, consider the question of permission without a hearing.

The substantive hearing

7. *Additional grounds at the substantive hearing*

- 7.1 Where an applicant who has been given permission to bring judicial review proceedings intends to apply under rule 32 to rely on additional grounds at the substantive hearing, the applicant must give written notice to the Tribunal and to any other person served with the application, not later than 7 working days before that hearing.

8. *Skeleton arguments for the substantive hearing*

- 8.1 The applicant must serve a skeleton argument on the Tribunal and on any other person served with the application, not later than 21 days before the substantive hearing.
- 8.2 The respondent and any other party wishing to make representations at the hearing must serve a skeleton argument on the Tribunal and on the applicant, not later than 14 days before the hearing.
- 8.3 Skeleton arguments must contain:-
- (a) a time estimate for the complete hearing, including the giving of the decision by the Tribunal;
 - (b) a list of issues;
 - (c) a list of the legal points to be taken (together with any relevant authorities with page references to the passages relied on);
 - (d) a chronology of events (with page references to the bundle of documents (see Practice Direction 9 below));
 - (e) a list of essential documents for the advance reading of the Tribunal (with page references to the passages relied on) (if different from that served with the application) and a time estimate for that reading; and
 - (f) a list of persons referred to.

9. *Bundle of documents for the substantive hearing*

- 9.1 The applicant must serve on the Tribunal and any other person served with the application a paginated and indexed bundle of all relevant documents required for the substantive hearing, when the applicant's skeleton argument is served.
- 9.2 The bundle must also include those documents required by the respondent and any other person who is expected to make representations at the hearing.

10. *Agreed final order*

- 10.1 If the parties agree about the final order to be made, the applicant must file at the Tribunal a document (with 2 copies) signed by all the parties setting out the terms of the proposed agreed order, together with a short statement of the matters relied on as justifying the proposed agreed order and copies of any authorities or statutory provisions relied on.
- 10.2 The Tribunal will consider the documents referred to in paragraph 10.1 above and will make the order if satisfied that the order should be made.
- 10.3 If the Tribunal is not satisfied that the order should be made, a hearing date will be set.

PART 4

URGENT APPLICATIONS FOR PERMISSION TO BRING JUDICIAL REVIEW PROCEEDINGS

11. *Request for Urgent Consideration*

- 11.1 Where it is intended to request the Tribunal to deal urgently with the application or where an interim injunction is sought, the applicant must serve with the application a written "Request for Urgent Consideration", in the form displayed on the Upper Tribunal's website at the time the application is made, which states:
- (a) the need for urgency;
 - (b) the timescale sought for the consideration of the application (eg. within 72 hours or sooner if necessary); and
 - (c) the date by which the substantive hearing should take place.

11.2 Where an interim injunction is sought, the applicant must, in addition, provide:

- (a) the draft order; and
- (b) the grounds for the injunction.

12. *Notifying the other parties*

12.1 The applicant must serve (by fax and post) the application form and the Request for Urgent Consideration on the respondent and interested parties, advising them of the application and that they may make representations.

12.2 Where an interim injunction is sought, the applicant must serve (by fax and post) the draft order and grounds for the injunction on the respondent and interested parties, advising them of the application and that they may make representations.

13. *Consideration by Tribunal*

13.1 The Tribunal will consider the application within the time requested and may make such order as it considers appropriate.

13.2 If the Tribunal specifies that a hearing shall take place within a specified time, the representatives of the parties must liaise with the Tribunal and each other to fix a hearing of the application within that time.

PART 5

APPLICATIONS WHICH CHALLENGE REMOVAL

14 *General*

14.1 The requirements contained in this Part are additional to those contained in Part 3 and (where applicable) Part 4 of these Practice Directions.

14.2 Nothing in these Practice Directions prevents a person from making the application after that person has been removed from the United Kingdom.

15 *Special requirements regarding the application*

15.1 Without prejudice to rule 28, the application must:-

(a) indicate on its face that this Part of these Practice Directions applies; and

(b) be accompanied by:-

(i) a copy of the removal directions and the decisions to which the application relates; and

(ii) any document served with the removal directions including any document which contains UKBA's factual summary of the case; and

(c) contain or be accompanied by the detailed statement of the applicant's grounds for making the application.

15.2 If the applicant is unable to comply with paragraph 15.1(b) or (c) above, the application must contain or be accompanied by a statement of the reasons why.

15.3 Notwithstanding rule 28A, immediately upon issue of the application, the applicant must send copies of the issued application form and accompanying documents to the address specified by the United Kingdom Border Agency.

16 *Referral in case of non-compliance*

16.1 Where the applicant has not complied with Practice Direction 15.1(b) or (c) above and has provided reasons for not complying, and the Tribunal has issued the application form, the Tribunal's staff will:-

(a) refer the matter to a Judge for consideration as soon as practicable; and

(b) notify the parties that they have done so.

17 *Application clearly without merit*

17.1 If, upon a refusal to grant permission to bring judicial review proceedings, the Tribunal indicates that the application is clearly without merit, that indication will be included in the order refusing permission.

These Practice Directions are made by the Senior President of Tribunals with the agreement of the Lord Chancellor. They are made in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007.

LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS
17 October 2011