Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal

Contents

Part 1

Preliminary

1. Interpretation, etc.

1.1. In these Practice Directions:

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

"the 2007 Act" means the Tribunals, Courts and Enforcement Act 2007;

"adjudicator" means an adjudicator appointed, or treated as appointed, under section 81 of the 2002 Act (as originally enacted);

"AIT" means the Asylum and Immigration Tribunal;

"CMR hearing" means a case management review hearing;

"fast track appeal" means an appeal to which the Fast Track rules apply;

"Fast Track Rules" means the rules in the Schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014;

"First-tier rule", followed by a number, means the rule bearing that number in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014;

"IAT" means the Immigration Appeal Tribunal;

"Transfer of Functions Order" means the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI/2010/21);

"The Tribunal" means the Immigration and Asylum Chamber of the First-tier Tribunal or of the Upper Tribunal, as the case may be;

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

1.2. Except where expressly stated to the contrary, any reference in these Practice Directions to an enactment is a reference to that enactment as amended by or under any other enactment.

1.3. Other expressions in these Practice Directions have the same meanings as in the 2007 Act.

1.4. These revised Practice Directions come into force on 18 December 2018 and replace the Practice Directions dated 13 November 2014 with the same title.

1.5. These Practice Directions apply, as appropriate, in relation to transitional cases to which Schedule 4 to the Transfer of Functions Order applies; and references to the First-tier Tribunal and the Upper Tribunal shall be construed accordingly.

Part 2

Practice Directions for the Immigration and Asylum Chamber

of the First-tier Tribunal

2. Standard directions in fast track appeals

2.1. In the case of a fast track appeal, the parties must respectively serve the material specified in Practice Direction 7.5(a) and (b) either at the hearing or, if practicable, on the business day immediately preceding the date of the hearing.

2.2. Subject to the exception mentioned in Practice Direction 7.7, witness statements served in pursuance of paragraph 2.1 shall stand as evidence-in-chief at the hearing.

Part 3

Practice Directions for the Immigration and Asylum Chamber

of the Upper Tribunal

3. Procedure on appeal

3.1. Where permission to appeal to the Upper Tribunal has been granted, then, unless and to the extent that they are directed otherwise, for the purposes of preparing for a hearing in the Upper Tribunal the parties should assume that:

(a) the Upper Tribunal will decide whether the making of the decision of the First-tier Tribunal involved the making of an error on a point of law, such that the decision should be set aside under section 12(2)(a) of the 2007 Act;

(b) except as specified in Practice Statement 7.2 (disposal of appeals by Upper Tribunal), the Upper Tribunal will proceed to re-make the decision under section 12(2)(b)(ii), if satisfied that the original decision should be set aside; and

(c) in that event, the Upper Tribunal will consider whether to re-make the decision by reference to the First-tier Tribunal's findings of fact and any new documentary evidence submitted under UT rule 15(2A) which it is reasonably practicable to adduce for consideration at that hearing.

3.2. The parties should be aware that, in the circumstances described in paragraph 3.1(c), the Upper Tribunal will generally expect to proceed, without any further hearing, to re-make the decision, where this can be undertaken without having to hear oral evidence. In certain circumstances, the Upper Tribunal may give directions for the giving of oral evidence at the relevant hearing, where it appears appropriate to do so. Such directions may be given before or at that hearing.

3.3. In a case where no oral evidence is likely to be required in order for the Upper Tribunal to re-make the decision, the Upper Tribunal will therefore expect any documentary evidence relevant to the re-making of the decision to be adduced in accordance with Practice Direction 4 so that it may be considered at the relevant hearing; and, accordingly, the party seeking to rely on such documentary evidence will be expected to show good reason why it is not reasonably practicable to adduce the same in order for it to be considered at that hearing.

3.4. If the Upper Tribunal nevertheless decides that it cannot proceed as described in paragraph 3.1(c) because findings of fact are needed which it is not in a position to make, the Upper Tribunal will make arrangements for the adjournment of the hearing, so that the proceedings may be completed before the same constitution of

the Tribunal; or, if that is not reasonably practicable, for their transfer to a different constitution, in either case so as to enable evidence to be adduced for that purpose.

3.5. Where proceedings are transferred in the circumstances described in paragraph 3.4, any documents sent to or given by the Tribunal from which the proceedings are transferred shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

3.6. Where such proceedings are transferred, the Upper Tribunal shall prepare written reasons for finding that the First-tier Tribunal made an error of law, such that its decision fell to be set aside, and those written reasons shall be sent to the parties before the next hearing.

3.7. The written reasons shall be incorporated in full in, and form part of, the determination of the Upper Tribunal that re-makes the decision. Only in very exceptional cases can the decision contained in those written reasons be departed from or varied by the Upper Tribunal which re-makes the decision under section 12(2)(b)(ii) of the 2007 Act.

3.8. Unless directed otherwise, the parties to any fast track appeal which is before the Upper Tribunal will be expected to attend with all necessary witnesses and evidence that may be required if the Upper Tribunal should decide that it is necessary to set aside the decision of the First-tier Tribunal and re-make the decision. It will be unusual for the Upper Tribunal to adjourn or transfer, but, if it does so, paragraph 3.6 and 3.7 will, so far as appropriate, apply.

3.9. In this Practice Direction and Practice Direction 4, "the relevant hearing" means a hearing fixed by the Upper Tribunal at which it will consider if the First-tier Tribunal made an error of law.

3.10. Without prejudice to the generality of paragraph 1.5, where, by virtue of any transitional provisions in Schedule 4 to the Transfer of Functions Order, the Upper Tribunal is undertaking the reconsideration of a decision of the AIT, references in this Practice Direction and Practice Direction 4 to the First-tier Tribunal shall be construed as references to the AIT.

4. Evidence

4.1. UT rule 15(2A) imposes important procedural requirements where the Upper Tribunal is asked to consider evidence that was not before the First-tier Tribunal. UT rule 15(2A) must be complied with in every case where permission to appeal is granted and a party wishes the Upper Tribunal to consider such evidence. Notice under rule 15(2A)(a), indicating the nature of the evidence and explaining why it was not submitted to the First-tier Tribunal, must be filed with the Upper Tribunal and

served on the other party within the time stated in any specific directions given by the Upper Tribunal; or, if no such direction has been given, as soon as practicable after permission to appeal has been granted.

4.2. A party who wishes the Upper Tribunal to consider any evidence that was not before the First-tier Tribunal must indicate in the notice whether the evidence is sought to be adduced:

(a) in connection with the issue of whether the First-tier Tribunal made an error of law, requiring its decision to be set aside; or

(b) in connection with the re-making of the decision by the Upper Tribunal, in the event of the First-tier Tribunal being found to have made such an error.

4.3. The notice must clearly indicate whether the party concerned wishes the evidence to be considered at the relevant hearing and state whether the evidence is in oral or documentary form.

4.4. Where a party wishes, in the circumstances described in paragraph 4.2(b), to adduce only documentary evidence, Practice Direction 3.3 will apply.

4.5. Where a party wishes, in the circumstances described in paragraph 4.2(b), to adduce oral evidence at the relevant hearing, the notice must explain why it is considered desirable to proceed in such a manner and give details of the oral evidence and a time estimate.

4.6. Where the Upper Tribunal acts under Practice Direction 3 to adjourn or transfer the hearing, it shall consider any notice given under UT rule 15(2A) and give any directions arising therefrom, if and to the extent that this has not already been done.

4.7. This Practice Direction does not apply in the case of a fast track appeal (as to which, see Practice Direction 3.8).

5. Pursuing appeal after grant of leave

5.1. This Practice Direction applies where:

(a) an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the 2002 Act because the appellant is granted leave to remain in the United Kingdom; but

(b) the appellant wishes, in pursuance of section 104(4B) or (4C), to pursue the appeal, insofar as it is brought on asylum grounds or on grounds of unlawful discrimination.

5.2. Where this Practice Direction applies, the appellant must comply with the following requirements (which are the relevant practice directions for the purposes of UT rule 17A(3)).

5.3. Where section 104(4B) of the 2002 Act (asylum grounds) applies, the notice required by UT rule 17A(3) to be sent or delivered to the Upper Tribunal must state:

(a) the appellant's full name and date of birth;

(b) the Tribunal's reference number;

(c) the Home Office reference number, if applicable;

(d) the Foreign and Commonwealth Office reference number, if applicable;

(e) the date on which the appellant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and

(f) that the appellant wishes to pursue the appeal in so far as it is brought on the ground specified in section 84(1)(g) of the 2002 Act which relates to the Refugee Convention.

5.4. Where section 104(4C) of the 2002 Act (grounds of unlawful discrimination) applies, the notice required by UT rule 17A(3) to be sent or delivered to the Upper Tribunal must state:

(a) the appellant's full name and date of birth;

(b) the Tribunal's reference number;

(c) the Home Office reference number, if applicable;

(d) the Foreign and Commonwealth Office reference number, if applicable;

(e) the date on which the appellant was granted leave to enter or remain in the United Kingdom; and

(f) that the appellant wishes to pursue the appeal in so far as it is brought on the ground specified in section 84(1)(b) of the 2002 Act which relates to section 19B of the Race Relations Act 1976 (discrimination by public authorities).

5.5. Where an appellant has sent or delivered a notice under UT rule 17A(3), the Upper Tribunal will notify the appellant of the date on which it received the notice.

5.6. The Upper Tribunal will send a copy of the notice issued under paragraph 5.5 to the respondent.

5.7. In this Practice Direction:

"appellant" means the party who was the appellant before the First-tier Tribunal; and

"respondent" means the party who was the respondent before the First-tier Tribunal.

Part 4

Practice Directions for the Immigration and Asylum Chamber

of the First-tier Tribunal and the Upper Tribunal

6. Form of notice of appeal etc.

6.1. The form of notice approved for the purpose of:

(a) First-tier rule 19 (notice of appeal);

(b) First-tier rule 33 (application for permission to appeal to the Upper Tribunal);

(c) First-tier rule 38 (bail applications); and

(d) UT rule 21 (application to the Upper Tribunal for permission to appeal)

as the case may be, is the appropriate form as displayed on the Tribunal's website at the time when the notice is given, or that form with any variations that circumstances may require.

7. Case management review hearings and directions

7.1. Where the Tribunal so directs, a CMR hearing will be held in the case of an appeal where the party who is or was the appellant before the First-tier Tribunal:

(a) is present in the United Kingdom; and

(b) has a right of appeal whilst in the United Kingdom.

7.2. It is important that the parties and their representatives understand that a CMR hearing is a hearing in the appeal and that the appeal may be determined under the relevant Procedure Rules if a party does not appear and is not represented at that hearing.

7.3. In addition to any information required by First-tier rule 19 (notice of appeal), the appellant before the First-tier Tribunal must provide that Tribunal and the respondent at the CMR hearing with:

(a) particulars of any application for permission to vary the grounds of appeal;

(b) particulars of any amendments to the reasons in support of the grounds of appeal;

(c) particulars of any witnesses to be called or whose written statement or report is proposed to be relied upon at the full hearing; and

(d) the draft of any directions that the appellant is requesting the Tribunal to make at the CMR hearing.

7.4. In addition to any documents required by relevant Procedure Rules, the party who is or was the respondent before the First-tier Tribunal must provide the Tribunal and the other party at the CMR hearing with:

(a) any amendment that has been made or is proposed to be made to the notice of decision to which the appeal relates or to any other document served on the person concerned giving reasons for that decision; and

(b) a draft of any directions that the Tribunal is requested to make at the CMR hearing.

7.5. In most cases, including those appeals where a CMR hearing is to be held, the Tribunal will normally have given to the parties the following directions with the notice of hearing:

(a) not later than 5 working days before the full hearing (or 10 days in the case of an out-of-country appeal) the appellant shall serve on the Tribunal and the respondent:

(i) witness statements of the evidence to be called at the hearing, such statements to stand as evidence in chief at the hearing;

(ii) a paginated and indexed bundle of all the documents to be relied on at the hearing with a schedule identifying the essential passages;

(iii) a skeleton argument, identifying all relevant issues including human rights claims and citing all the authorities relied upon; and

(iv) a chronology of events;

(b) not later than 5 working days before the full hearing, the respondent shall serve on the Tribunal and the appellant a paginated and indexed bundle of all the documents to be relied upon at the hearing, with a schedule identifying the relevant passages, and a list of any authorities relied upon.

7.6. At the end of the CMR hearing, the Tribunal will give the parties any further written directions relating to the conduct of the appeal.

7.7. Although in normal circumstances a witness statement should stand as evidence in-chief, there may be cases where it will be appropriate for appellants or witnesses to have the opportunity of adding to or supplementing their witness statements.

7.8. In addition to the directions referred to above, at the end of the CMR hearing the Tribunal will also give to the parties written confirmation of:

(a) any issues that have been agreed at the CMR hearing as being relevant to the determination of the appeal; and
(b) any concessions made at the CMR hearing by a party.

8. Trial bundles

8.1. The parties must take all reasonably practicable steps to act in accordance with paragraph 8.2 to 8.6 in the preparation of trial bundles for hearings before the Tribunal.

8.2. The best practice for the preparation of bundles is as follows:

(a) all documents must be relevant, be presented in logical order and be legible;

(b) where the document is not in the English language, a typed translation of the document signed by the translator, and certifying that the translation is accurate,

must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator;

(c) if it is necessary to include a lengthy document, that part of the document on which reliance is placed should, unless the passages are outlined in any skeleton argument, be highlighted or clearly identified by reference to page and/or paragraph number;

(d) bundles submitted must have an index showing the page numbers of each document in the bundle;

(e) the skeleton argument or written submission should define and confine the areas at issue in a numbered list of brief points and each point should refer to any documentation in the bundle on which the appellant proposes to rely (together with its page number);

(f) where reliance is placed on a particular case or text, photocopies of the case or text must be provided in full for the Tribunal and the other party; and

(g) large bundles should be contained in a ring binder or lever arch file, capable of lying flat when opened.

8.3. The Tribunal recognises the constraints on those representing the parties in appeals in relation to the preparation of trial bundles and this Practice Direction does not therefore make it mandatory in every case that bundles in exactly the form prescribed must be prepared. Where the issues are particularly complex it is of the highest importance that comprehensive bundles are prepared. If parties to appeals fail in individual cases to present documentation in a way which complies with the direction, it will be for the Tribunal to deal with any such issue.

8.4. Much evidence in immigration and asylum appeals is in documentary form. Representatives preparing bundles need to be aware of the position of the Tribunal, which may be coming to the case for the first time. The better a bundle has been prepared, the greater it will assist the Tribunal. Bundles should contain all the documents that the Tribunal will require to enable it to reach a decision without the need to refer to any other file or document. The Tribunal will not be assisted by repetitious, outdated or irrelevant material.

8.5. It may not be practical in many appeals to require there to be an agreed trial bundle but it nevertheless remains vital that the parties inform each other at an early stage of all and any documentation upon which they intend to rely.

8.6. The parties cannot rely on the Tribunal having any prior familiarity with any country information or background reports in relation to the case in question. If either party

wishes to rely on such country or background information, copies of the relevant documentation must be provided.

9. Adjournments

9.1. Applications for the adjournment of appeals (other than fast track appeals) listed for hearing before the Tribunal must be made not later than 5.00p.m. one clear working day before the date of the hearing.

9.2. For the avoidance of doubt, where a case is listed for hearing on, for example, a Friday, the application must be received by 5.00p.m. on the Wednesday.

9.3. The application for an adjournment must be supported by full reasons and must be made in accordance with relevant Procedure Rules.

9.4. Any application made later than the end of the period mentioned in paragraph 9.1 must be made to the Tribunal at the hearing and will require the attendance of the party or the representative of the party seeking the adjournment.

9.5. It will be only in the most exceptional circumstances that a late application for an adjournment will be considered without the attendance of a party or representative.

9.6. Parties must not assume that an application, even if made in accordance with paragraph 9.1, will be successful and they must always check with the Tribunal as to the outcome of the application.

9.7. Any application for the adjournment of a fast track appeal must be made to the Tribunal at the hearing and will be considered by the Tribunal in accordance with relevant Procedure Rules.

9.8. If an adjournment is not granted and the party fails to attend the hearing, the Tribunal may in certain circumstances proceed with the hearing in that party's absence.

10. Expert evidence

10.1. A party who instructs an expert must provide clear and precise instructions to the expert, together with all relevant information concerning the nature of the appellant's case, including the appellant's immigration history, the reasons why the appellant's claim or application has been refused by the respondent and copies of any relevant previous reports prepared in respect of the appellant.

10.2. It is the duty of an expert to help the Tribunal on matters within the expert's own expertise. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

10.3. Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

10.4. An expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise, and should not assume the role of an advocate.

10.5. An expert should consider all material facts, including those which might detract from his or her opinion.

10.6. An expert should make it clear:

(a) when a question or issue falls outside his or her expertise; and

(b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

10.7. If, after producing a report, an expert changes his or her view on any material matter, that change of view should be communicated to the parties without delay, and when appropriate to the Tribunal.

10.8. An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions.

10.9. An expert's report must:

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert has relied on in making the report;

(c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say

whether or not the procedure has been carried out under the expert's supervision;

(f) where there is a range of opinion on the matters dealt with in the report:

(i) summarise the range of opinion, so far as reasonably practicable, and

(ii) give reasons for the expert's own opinion;

(g) contain a summary of the conclusions reached;

(h) if the expert is not able to give an opinion without qualification, state the qualification; and

(i) contain a statement that the expert understands his or her duty to the Tribunal, and has complied and will continue to comply with that duty.

10.10. An expert's report must be verified by a Statement of Truth as well as containing the statements required in paragraph 10.9(h) and (i).

10.11. The form of the Statement of Truth is as follows: "I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion".

10.12. The instructions referred to in paragraph 10.9(c) are not protected by privilege but cross-examination of the expert on the contents of the instructions will not be allowed unless the Tribunal permits it (or unless the party who gave the instructions consents to it). Before it gives permission, the Tribunal must be satisfied that there are reasonable grounds to consider that the statement in the report or the substance of the instructions is inaccurate or incomplete. If the Tribunal is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice to do so.

10.13. In this Practice Direction:

"appellant" means the party who is or was the appellant before the First-tier Tribunal; and
"respondent" means the party who is or was the respondent before the First-tier Tribunal.

11. Citation of unreported determinations

11.1. A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless:

(a) the person who is or was the appellant before the First-tier Tribunal, or a member of that person's family, was a party to the proceedings in which the previous determination was issued; or

(b) the Tribunal gives permission.

11.2. An application for permission to cite a determination which has not been reported must:

(a) include a full transcript of the determination;

(b) identify the proposition for which the determination is to be cited; and

(c) certify that the proposition is not to be found in any reported determination of the Tribunal, the IAT or the AIT and had not been superseded by the decision of a higher authority.

11.3. Permission under paragraph 11.1 will be given only where the Tribunal considers that it would be materially assisted by citation of the determination, as distinct from the adoption in argument of the reasoning to be found in the determination. Such instances are likely to be rare; in particular, in the case of determinations which were unreportable (see Practice Statement 11 (reporting of determinations)). It should be emphasised that the Tribunal will not exclude good arguments from consideration but it will be rare for such an argument to be capable of being made only by reference to an unreported determination.

11.4. The provisions of paragraph 11.1 to 11.3 apply to unreported and unreportable determinations of the AIT, the IAT and adjudicators, as those provisions apply respectively to unreported and unreportable determinations of the Tribunal.

11.5. A party citing a determination of the IAT bearing a neutral citation number prior to [2003] (including all series of "bracket numbers") must be in a position to certify that the matter or proposition for which the determination is cited has not been the subject of more recent, reported, determinations of the IAT, the AIT or the Tribunal.

11.6. In this Practice Direction and Practice Direction 12, "determination" includes any decision of the AIT or the Tribunal.

12. Starred and Country Guidance determinations

12.1 Reported determinations of the Tribunal, the AIT and the IAT which are "starred" shall be treated by the Tribunal as authoritative in respect of the matter to which the "starring" relates, unless inconsistent with other authority that is binding on the Tribunal.

12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

(a) relates to the country guidance issue in question; and

(b) depends upon the same or similar evidence.

12.3 A list of current CG cases will be maintained on the Tribunal's website. Any representative of a party to an appeal concerning a particular country will be expected to be conversant with the current "CG" determinations relating to that country.

12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.

13. Bail applications

13.1 Subject to First-tier Rule 39(3), an application for bail must, if practicable, be listed for hearing within six working days of receipt by the Tribunal of the notice of application.

13.2 Any such notice which is received by the Tribunal after 3.30p.m. on a particular day will be treated for the purposes of this paragraph as if it were received on the next business day.

13.3 An Upper Tribunal judge may exercise bail jurisdiction under the Immigration Act 1971 by reason of being also a First-tier judge.

13.4 Notwithstanding paragraph 13.3, it will usually be appropriate for a bail application to be made to an Upper Tribunal judge only where the appeal in question is being

heard by the Upper Tribunal, or where a hearing before the Upper Tribunal is imminent. In case of doubt, a potential applicant should consult the bails section of the First-tier Tribunal.

14. This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor. It is made in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007.

LORD JUSTICE CARNWATH SENIOR PRESIDENT OF TRIBUNALS 10 February 2010

AMENDED BY SIR JEREMY SULLIVAN SENIOR PRESIDENT OF TRIBUNALS 13 November 2014

AMENDED BY SIR ERNEST RYDER SENIOR PRESIDENT OF TRIBUNALS 18 December 2018