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## **CONSULTATION ON PROPOSALS TO EXPEDITE APPEALS MADE BY IMMIGRATION AND ASYLUM DETAINEES**

I am writing to inform you that we are today publishing a consultation on proposals to expedite appeals brought by detained appellants against the Home Office regarding their immigration status. Our policy proposals seek to inform Tribunal Rules for the First-tier and Upper Tribunal of the Immigration and Asylum Chamber. The policy objective is to ensure that the appeals process for detained cases is accessible and fair, with appeals being determined quickly and efficiently. Tribunal Rules themselves are made by the Tribunal Procedure Committee (TPC). This consultation will inform Government policy in relation to an expedited appeal process for detained appellants and, we intend, will assist the TPC.

### **Background**

From 2000 to 2015 the UK operated a detained fast track policy for those asylum cases that could be decided quickly. Tribunal Rules known as 'the Principal Rules' established the procedure for dealing with appeals and within those Rules a schedule provided for 'Fast Track Rules' which set out an expedited procedure for persons who were appealing an asylum decision and who were detained under immigration powers. In July 2015 the Court of Appeal upheld a decision by the High Court that the Fast Track Rules were unlawful due to the speed of the overall process and a lack of sufficient safeguards for appellants and, as a result, the Fast Track Rules were quashed. Since then there have been no fast track appeals rules in place and all immigration and asylum appeals have been dealt with under the Principal Rules. The Court of Appeal did not however find the policy of having a fast track process wrong in principle.

The Government having considered the evidence has concluded that the current arrangements, with appeals dealt with under the Principal Rules, are not operating effectively enough and now wishes to consult on policy proposals to provide for a new expedited appeals process.

### **Proposals**

We have worked closely with the Home Office in developing our proposals and carefully considered the concerns of the Court of Appeal. The key proposals on which we are consulting are:

- a. **to provide for a new expedited appeals process in rules.** These rules (to be made by the TPC in due course) will need to address the issues identified by the Court of Appeal, and include necessary safeguards to ensure fairness and efficiency;
- b. **to apply the expedited appeals process to all detained appellants who appeal a Home Office immigration decision.** This will include detained asylum cases who have a right of appeal under the immigration legislation, Foreign National Offenders subject to deportation where they are detained either in Immigration Removal Centres or in prison and appellants challenging a decision in respects of their European Economic Area (EEA) treaty rights. We consider that the expedited appeals process should apply to all immigration appeals where the appellant is detained as the need to expedite appeals is based on the fact of detention and not on the type of claim.
- c. **revised timescales for the appeal to be determined.** The previous fast track rules set out specific timescales for each stage of the appeal process, for example a timetable of two days for an appeal to be lodged and three days for the appeal to be listed for hearing. The Court of Appeal were concerned that this timetable was too tight and did not have sufficient safeguards in place to make sure all appellants could have a fair opportunity to present their case. We are therefore consulting on alternative options:
  - i) introducing a significantly longer overall timescale of 25 working days in the First Tier Tribunal to determine an appeal which would allow the Tribunal discretion within that overall limit to determine the time needed for each stage in any individual case, or
  - ii) retaining set timescales for each stage, adding up to an overall timescale of 25 working days. In addition appellants would have a further 10 working days to determine any further permission to appeal in the First Tier Tribunal and, if refused, another 10 working days to renew their permission application to the Upper Tribunal.

The consultation also asks for views on taking a power in primary legislation to introduce specific time-frames for particular types of appeals in the legislation itself or through secondary legislation.

- d. **whether to have a case management review stage in the appeal process.** This follows the Court of Appeal's concern that the previous fast track rules did not have sufficient safeguards for adjourning cases or transferring them out of the process where it is in the interests of justice to do so;
- e. **whether to charge a fee to bring an appeal.** Under the previous fast track rules which applied only to those in detention bringing asylum appeals, appellants were exempt from the tribunal fee. However, as we are proposing that the new rules will apply more widely to appeals from all immigration decisions where the appellant is detained, we want to consider whether to charge a fee for all appellants in accordance with the principle that users should pay for the service they receive, or whether we should provide them with an exemption.

The proposed new expedited appeals process for detained appellants underpins the Government's intention to ensure that those who make immigration and asylum claims whilst in detention are subject to an expedited appeal process. This should enable cases to be determined with speed and efficiency and for appellants to be detained for the shortest period necessary and without compromising access to a fair and effective appeals process. Full details are set out in the consultation paper which is available on the MoJ website at this link <https://consult.justice.gov.uk>. The consultation will close on 22 November.

I will place a copy of the consultation document in the libraries of both Houses.

I am also sending this letter to Robert Neill MP in his role as Chair of the Justice Committee.

*Yours ever,  
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**SIR OLIVER HEALD QC MP**

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