

ILPA information sheet

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Immigration Appeals 2

1st February 2010

This information sheet explains changes to the immigration appeals system which will take effect on 15 February 2010. The June 2009 information sheet on “Immigration Appeals – Changes” provides background information.

On 15 February, the Asylum and Immigration Tribunal (AIT) will be replaced. From that time, immigration appeals will be dealt with by the First-tier Tribunal (Immigration and Asylum Chamber) and the Upper Tribunal (Immigration and Asylum Chamber). There will be transitional arrangements (described below) that deal with what happens to an appeal before the AIT which remains outstanding on 15 February.

The First-tier Tribunal and Upper Tribunal

These are the two tiers of the unified Tribunal system introduced under the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal is the lower tier of the new system; and the Upper Tribunal is the higher tier. This new system has replaced most tribunals that, before the 2007 Act, considered appeals against decisions of government bodies. The new system has a President and a Tribunal Procedures Committee to oversee how it is working and the procedures it uses. The President is Lord Justice Carnwath.

Judges and other members of the previous tribunals have become judges and members of the new system. Immigration judges will become judges of the First-tier Tribunal. Some of these (designated immigration judges) will also become deputy judges of the Upper Tribunal. Senior immigration judges will become judges of the Upper Tribunal.

Each of the two tiers will have a specialist part to deal with immigration appeals. This specialist part will be called the Immigration and Asylum Chamber.

Procedures in the First-tier Tribunal (Immigration and Asylum Chamber)

The procedures in the First-tier Tribunal (Immigration and Asylum Chamber) will be almost identical to the current procedures in the AIT for dealing with appeals. Most of the procedure rules of the AIT are in effect to be applied to the First-tier Tribunal.

However, unlike currently in the AIT, a decision of the First-tier Tribunal will not be subject to a reconsideration process. Instead, it will be possible to apply for permission to appeal against a decision of the First-tier Tribunal to the Upper Tribunal. It will be necessary to show an error of law in the decision of the First-tier Tribunal. In practice, this may be very similar to the reconsideration process that has operated in the AIT since it was established in April 2005.

Procedures in the Upper Tribunal (Immigration and Asylum Chamber)

The Upper Tribunal has its own procedure rules. For the purposes of the Immigration and Asylum Chamber, the procedures will be similar to how the AIT now operates the reconsideration process.

Appeal forms and bringing appeals

There will be new appeal forms to be used from 15 February. There will also be new guidance to accompany those forms. These are not available yet. When they are produced, they should be available on the Tribunals Service website at www.tribunals.gov.uk

The new forms and guidance will also set out where the appeal forms need to be sent. The Tribunals Service has indicated that the address to which these must be sent from 15 February will be different to the address which currently operates for the AIT.

Transitional arrangements

This section sets out information about what will happen with appeals before the AIT that remain outstanding on 15 February when the AIT is replaced. The full extent of the transitional arrangements is set out in Schedule 4 to the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI 2010/21). This is not all repeated here.

- An appeal made to the AIT before 15 February, on which the AIT has made no decision, will on that date be automatically transferred to the First-tier Tribunal. It will continue as if the appeal had been made to the First-tier Tribunal to begin with.
- An application for reconsideration of a decision of the AIT made before 15 February, on which the AIT has made no decision, will on that date be automatically transferred to the First-tier Tribunal. It will continue as an application for permission to appeal to the Upper Tribunal.
- An application for reconsideration of a decision of the AIT made to the High Court before 15 February, on which the High Court has made no decision, will continue as an application before the High Court. If the High Court orders that a reconsideration should take place, the case will then be transferred to the Upper Tribunal. It will then continue as an appeal to the Upper Tribunal.
- Where the AIT or High Court has, before 15 February, ordered a reconsideration of a decision of the AIT and that reconsideration remains outstanding, the case will on that date be automatically transferred to the Upper Tribunal. It will then continue as an appeal to the Upper Tribunal.

These and other transitional arrangements are designed to allow appeals to continue in the new system in much the same way that they would have continued had the AIT not been replaced.

Effect of these changes

The changes highlighted in this information sheet may, in many cases, make little or no practical difference to how an appeal is conducted. The changes do not introduce any new appeal rights. They do not remove any appeal rights. The judges who will consider these appeals will, for the most part, be the same judges that now consider appeals in the AIT. However, the name of the relevant tribunals will change; as will the address to which appeal forms need to be sent and the forms that are to be used.