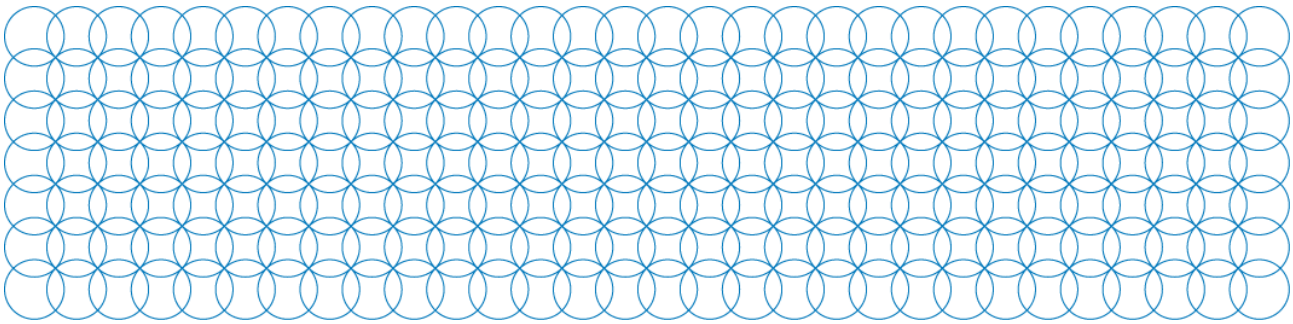
Ministry of Justice

Immigration and Asylum Appeals

Consultation on proposals to expedite appeals by immigration detainees

This consultation begins on 12 October 2016

This consultation ends on 22 November 2016



Ministry of Justice

Immigration and Asylum Appeals

Consultation on proposals to expedite appeals by immigration detainees

A consultation produced by the Ministry of Justice. It is also available at https://consult.justice.gov.uk/

About this consultation

To:	Immigration and asylum applicants and appellants, legal professionals, the judiciary, immigration removal centre staff, tribunal staff, UK policy institutions, voluntary organisations particularly those with an interest in immigration and asylum claims. This list is not exhaustive.
Duration:	From 12/10/2016 to 22/11/2016
Enquiries (including requests for the paper in an alternative format) to:	Expedited Appeals Process Consultation Team Administrative Justice 3rd floor post point 3.32 Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3555 Email: admin.justice@justice.gsi.gov.uk
How to respond:	Please send your response by 22nd November 2016 to: Expedited Appeals Process Consultation Team Administrative Justice 3rd Floor post point 3.32 Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3555 Email: admin.justice@justice.gsi.gov.uk
Additional ways to feed in your views:	This consultation exercise can be completed on line at https://consult.justice.gov.uk/
Response paper:	A response to this consultation exercise is due to be published in due course at: https://consult.justice.gov.uk/

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Ministerial Foreword

This Government wants a justice system that works for everyone.

It is vitally important that people can appeal immigration and asylum decisions made by the Home Office as efficiently as possible. This is even more important when appellants are held in detention. It is in all parties' interests that time in detention should not be prolonged.

But the process has got to be fair.

Previously, people whose asylum claim had been refused and who were detained in specific Immigration Removal Centres had their appeal fast tracked under the Detained Fast Track Rules 2014. In July 2015, the Detained Fast Track was quashed following a Court of Appeal judgment that found the rules unlawful, due to the speed of the process coupled with a lack of sufficient safeguards for appellants.

We have carefully considered the Court of Appeal's concerns and have taken steps to address them in our proposals for a new fast track.

We think our proposals would provide certainty to appellants, their families and legal representatives, with a clear timetable to ensure their cases are dealt with swiftly, minimising their time in detention.

We also propose that further safeguards are built into the system through additional judicial oversight, to ensure a just, fair and final determination of these cases.

As part of these policy proposals, we are suggesting extending the fast track process to all detained Foreign National Offenders. This would make sure their appeals are handled quickly, and would help remove potential obstacles in returning them to their home country should their appeal fail.

The Tribunal Procedure Committee (TPC) is the body responsible for making tribunal rules. Our aim in issuing this consultation is to gather additional evidence to help Government formulate policy and also to assist the TPC by providing a considered Government policy position which takes account of consultation responses.

The consultation runs for six weeks and closes on the 22nd of November.

Sir Oliver Heald QC MP
Minister of State for Justice

Introduction

1. Appeals in immigration and asylum detained cases are currently heard under the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (known as the 'Principal Rules') in the first instance. This means that the same procedures apply to all immigration and asylum appeals, whether the appellant is detained or not, and there is no guaranteed maximum time period for determination of an appeal.

2. Tribunal procedure rules must ensure that the system is accessible and fair and that proceedings are handled quickly and efficiently. Where an appellant in an immigration appeal is detained the case for accelerating that appeal is based on the need to ensure that detention is for the shortest period necessary in order to determine the appeal as quickly as possible without compromising access to a fair and effective appeals process.

3. Whilst existing judicial guidance in the Immigration and Asylum Chamber already prioritises the listing of detained cases it provides no maximum time period for determination of an appeal. An assessment of detained asylum cases between August 2015 and March 2016 found that it takes on average more than 65 calendar days from receipt of the appeal to its determination in the First-tier Tribunal (FtT) and there is a significant amount of variation between individual cases. Some detained appellants remain in detention for over 100 days while their case is determined in the FtT[1].

4. The Government wants to ensure that no appellant need be held in detention for so long pending their appeal, and believes that this policy can best be achieved by specific procedure rules which govern the time frames for appeals in detained cases. The policy objective is an accessible and fair process for the quick and efficient determination of immigration appeals from detained appellants.

5. This consultation sets out proposals for that process.

Previous Detained Fast Track Rules

6. From 2000 to 2015 the UK operated a Detained Fast Track (DFT) policy for asylum cases that could be decided quickly. The courts have upheld the principle that the prompt and effective determination of asylum claims is in the public interest and in accordance with a legitimate government policy objective[2].

7. As noted above, the Principal Rules establish the procedure for immigration and asylum appeals. Until July 2015 they contained a Schedule which provided for 'Fast Track Rules' setting out an accelerated appeals procedure for asylum appeals brought

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[1] *Figures are derived from management information from the Home Office databases and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.*

2 see R (L) v SSHD [2003] EWCA Civ 25, [2003]1 WLR 1230 at paras 48 to 53 and R (Refugee Legal Centre) v SSHD [2004] EWCA Civ 1481, [2005] 1 WLR 2219 at paras 6 to 8 and 20 to 25

by persons detained in Colnbrook, Harmondsworth and Yarl's Wood Immigration Removal Centres. There was also a corresponding rule in the Upper Tribunal (UT) procedural rules which set a time limit for permission to appeal to the UT.

8. In July 2015, the Court of Appeal upheld a decision of the High Court[3] that the Fast Track Rules 2014 (the 'FTR') were unlawful due to the speed of the overall process when taken together with the lack of sufficient safeguards for appellants, and specifically the lack of access to legal representation as a result of time constraints. The then Immigration Minister, James Brokenshire, suspended the fast track policy by means of a Written Ministerial Statement on 2 July 2015 and the FTR 2014 were quashed by an order of the High Court. There has been no fast track appeals procedure in place since July 2015 and all cases have been dealt with under the Principal Rules.

9. It is important to note that the courts did not find that the principle of a fast track process was in itself unlawful. The Court of Appeal said:

> "The object of the [Home Secretary] in placing asylum appeals in the fast track is the entirely laudable one of dealing with them quickly […] They are placed in the fast track so that they can be handled quickly and efficiently."

10. However, the Court of Appeal was clear that the specific fast track rules in place were unlawful:

> "[The] FTR do not strike the correct balance between (i) speed and efficiency and (ii) fairness and justice. [The FTR are] too heavily weighted in favour of the former and needs to be adjusted."

11. It is the terms of that adjustment that are the subject of this policy consultation.

Procedure for making rules

12. Policy development in this area must be considered in the context of the role of the Tribunal Procedure Committee (the 'TPC') which is an independent Non-Governmental Public Body established through primary legislation. Under the Tribunals, Courts and Enforcement Act 2007, the TPC is responsible for making tribunal procedure rules governing practice and procedure in the FtT and UT. Government departments approach the TPC to consider the need for new or amended rules in dealing with appeals as a result of their policies. The Government is clear that it is the role of the TPC to make rules in accordance with the TPC's statutory obligations, including consulting on any proposals they develop. The Government's aim in issuing this consultation on the need to expedite appeals where the appellant is detained and on how that can be done through rules is, firstly, to gather additional evidence to help Government formulate policy and secondly, to be able to assist the TPC by providing a considered Government policy position which has taken consultation responses into account.

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[3] *Court of Appeal judgment [2015] EWCA Civ 840 upholding the High Court judgment in R(Detention Action) v First-tier Tribunal (Immigration and Asylum Chamber), Upper Tribunal (Immigration and Asylum Chamber), Lord Chancellor & Secretary of State for the Home Department [2015] EWHC 1689 (Admin)*

13. The TPC has a statutory obligation to conduct its own consultation before making tribunal procedure rules, and those rules must be signed by a majority of members of the TPC. The rules must then be submitted to the Lord Chancellor for approval. Unless they are disallowed by the Lord Chancellor the rules are made in a Statutory Instrument laid before Parliament.

14. The TPC's power to make tribunal procedure rules must, under the law, be exercised with a view to securing that:

    a. in proceedings before the First–tier Tribunal and Upper Tribunal, justice is done;

    b. the tribunal system is accessible and fair;

    c. proceedings before the First–tier Tribunal or Upper Tribunal are handled quickly and efficiently;

    d. the rules are both simple and simply expressed; and

    e. the rules where appropriate confer on members of the First–tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.[4]

15. Since the Court of Appeal's decision last year the Ministry of Justice has been discussing with the TPC and the Home Office how best to develop a policy to address the Court's concerns, in particular, what adjustments would be necessary to ensure outcomes are fair while ensuring that proceedings are handled quickly and efficiently and with due regard to the circumstances of those in detention.

16. In designing the policy proposals for a new expedited appeal process for detained cases, the Government has given careful consideration not only to the Court of Appeal judgment but also to points made in discussions held earlier this year between the TPC and the Home Office; and in discussions between the Immigration Law Practitioner's Association (ILPA), Detention Action, the Law Society and the TPC's immigration subgroup. In January this year the TPC came to the view that it needed to see more evidence that rules for a new fast track appeal process were necessary and agreed to consider further proposals and evidence from the Home Office when it became available.

17. The Government has reflected carefully on the Court of Appeal's concerns and is now consulting on policy proposals for a new appeals process which would apply to all appellants who are in detention, not just asylum claimants. The intention is that this will be part of an end to end detained process which seeks to ensure that detained cases are dealt with quickly from the point of consideration in the Home Office to determination of the appeal. The aim is for decisions by Home Office officials to normally be made within 28 calendar days, and, where there is then an in-country right of appeal, for that appeal to be subject to an accelerated appeals process.

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[4] *Section 22(4) Tribunals, Courts and Enforcement Act 2007*

The Proposals

Rules to deliver a new fast track

18. Following the suspension of the Detained Fast Track, the Home Office put in place a dedicated detained asylum casework ('DAC') team to examine and determine asylum claims by those in detention. This has enabled the Home Office to prioritise determination of these claims from an administrative perspective. Appeals of these decisions have been listed by the FtT at two dedicated hearing centres under the Principal Rules and in line with judicial guidance from the FtT Chamber President which provides that appeals where the appellant is in detention should be prioritised for listing.

19. Although this process has had some success in prioritising appeals where the appellant is detained, this is not the case with all detainees and there are significant variations in the time taken to determine appeals in all categories of detained appeals, some appellants being detained for months pending appeal. In other cases, the length of time before an appeal is listed for hearing results in the Home Office having to release the appellant given there is no prospect of removal in a reasonable time frame – even if the latter presents a risk of absconding.

20. With reference to those spending the longest time in detention, Home Office data indicates that 70 cases considered by the DAC team in the first 11 months of operation were still in detention when the appeal was determined. For this group, the mean average time from detention for the purpose of considering an asylum claim to the FtT determination was 102 calendar days, with a range of between 85 days in June 2016 and 118 days in October 2015[5]. Much of this time (61 days on average) was taken up by the appeal. Equivalent timeframes for Foreign National Offenders (FNOs) held in Home Office detention were much longer still.

21. We think it is right to provide quicker appeal timeframes for cases in detention which will reduce the length, and therefore the impact, of continued detention on detainees. If the time taken to determine the appeal were reduced, time in detention for some appellants could be substantially reduced.

22. The Government is clear that detention should be used sparingly and for the shortest period. Unfortunately, there will always be some individuals who are determined not to comply with immigration laws and who need to be removed from the UK. For these individuals a decision to detain in order to enforce immigration control pursues a legitimate aim and is in accordance with the law. In order to detain someone under immigration powers for the purpose of removal there has to be a realistic prospect of removal within a reasonable timeframe. What is reasonable will depend on the particular circumstances of the case. However, if there are no clear timescales to determine an appeal and the process runs over a significant number of weeks, detainees are more likely to be released or bailed pending their appeal. While the

[5] *Figures are derived from management information from the Home Office databases and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols*

Home Office can impose conditions on release, including requiring individuals to report to the Home Office, those who are determined to breach the UK's immigration laws may abscond. This results in additional resource being required to relocate individuals.

23. It is the Government's view that it is in the interests of all parties that there should be a set timeframe for detained appeals. This would mean that, unless transferred out of the accelerated process, there would be a guaranteed maximum time period from the lodging of an appeal to its determination by the FtT. By providing increased certainty as to the length of time the appeals process takes, these measures would enable the government to better predict and therefore better manage resource and staffing requirements in the detention and court estate. Faster determination of appeals would also benefit appellants: those whose appeals are successful would be released earlier and those who are unsuccessful would benefit from a final determination as to their immigration status. All parties, including legal representatives, Her Majesty's Courts and Tribunals Service (HMCTS) and the Home Office would benefit from increased certainty in terms of planning.

24. It is the Government's view in light of the data that the policy objective of a guaranteed maximum timeframe for determination of appeals is unlikely to be achievable without introducing specific rules for detained cases and that the introduction of rules is the best way to ensure an accelerated process which is fair, efficient and quick. The Government is also clear that any rules must address the issues, identified by the High Court and the Court of Appeal, which led to unfairness under the previous regime. Our policy proposals in relation to how to achieve this through rules are designed to provide the necessary safeguards.

    Question One. Do you agree that specific Rules are the best way to ensure an expedited appeals process for all detained appellants which is fair and just? If not, why not?

Detained cases

25. The Fast Track Rules 2014 applied only to appeals against refused asylum claims from appellants detained in three specified immigration detention centres: Colnbrook, Harmondsworth and Yarl's Wood. It is the Government's view that a new fast track process should apply to all immigration appeals where the appellant is detained at the time of decision, including FNOs detained in Immigration Removal Centres and most of those currently detained in prisons, whether detained under criminal or immigration powers. The policy aim is to minimise the period of detention in all cases, including FNOs, where the intention is that the FNO would be removed from the UK as early as possible in their sentence, or immediately at the end of their sentence, once their immigration appeal is finally determined.

26. The Government therefore proposes that all detained appellants who have an in-country right of appeal should have their appeal expedited for determination by the FtT and UT.

27. Between June 2015 and June 2016 there were on average 32 FNO appeals from prisons and 78 appeals from Immigration Removal Centres per month and we expect

the figure to be similar going forward[6]. Given these numbers, we propose that most detained immigration and asylum appeals, and appeals from FNOs who have served their custodial sentence and transferred to an immigration removal centre, will be heard at the designated hearing centres at Harmondsworth and Yarl's Wood, previously used to hear appeals under the Fast Track Rules, as they are co-located with the three Immigration Removal Centres. We think that FNOs in prison serving their sentence should have their cases listed at an appropriate court within the expedited timeframe specified in new rules.

Question Two. Do you think that an expedited immigration appeals process should apply to all those who are detained? If not, why not?

Question Three. Do you have any other proposals for alternative criteria to select groups who would benefit from an expedited immigration appeal process?

Timescale

28. The previous fast track process set specific time-limits for each stage of the appeal (i.e. lodging the appeal, listing the case and producing a written decision). The Court of Appeal found that the timetable under the FTR was too fast in light of the fact that there were insufficient safeguards in place to ensure that all appellants would be afforded a fair opportunity to present their cases**.**

29. The table below sets out a comparison of the time limits between the FTR 2014 and the current Principal Rules.

	Fast Track Rules 2014	Principal Rules
Time to lodge notice of appeal after receipt of decision	2 working days (Rules 3 to 6)	14 calendar days (Rule 19(2))
Time for respondent to file documents after receipt of notice of appeal	2 working days (Rule 7)	28 calendar days (Rules 23-24)
Time for listing appeal from day on which respondent provides documents	3 working days (Rule 8)	No time limit
Time for giving judgment after hearing	2 working days (Rule 10)	No time limit

[6] *Figures are derived from management information from the Home Office databases and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.*

Time for making application for permission to appeal, from judgment in the FtT	3 working days (Rule 11)	28 calendar days (Rule 33(2) and (3))
Total	**12 working days**	-
Time for renewing application for permission to appeal to the UT, from FtT refusal of permission	3 working days (Rule 21(aa)(ii) of the UT Rules)	14 calendar days (Rule 21(aa)(i) of the UT Rules)
Re-listing after an adjournment in the FtT	10 working days (Rule 12)	No time limit
Time for listing appeal in the UT from notice of permission being given	5 working days if notice sent/ 2 working days if notice given electronically or personally (Rule 36A of the UT Rules)	No time limit

30. One approach for a new fast track procedure would be for the rules to specify time periods for each stage of the appeal, whilst ensuring that each stage is longer than the previous time limits in the Fast Track Rules 2014 which the Court of Appeal found to be unfair. The advantage of such an approach is that it would provide certainty for all parties as to the length of time that each stage of the appeal will take.

31. The table below provides an illustrative outline of how the Government envisages that an overall timescale of 25 working days could be apportioned to the different stages of the appeal in new fast track rules for detained immigration appeals.

	Provisional Fast Track Rules	Principal Rules
Time to lodge notice of appeal after receipt of decision	5 working days	14 calendar days (Rule 19(2))
Time for respondent to file documents after receipt of notice of appeal	5 working days	28 calendar days (Rules 23-24)
Time for listing appeal from day on which respondent provides documents	10 working days	No time limit
Time for giving judgment after hearing	5 working days	No time limit
25 working days		
Re-listing after an adjournment in the FtT	15 working days	No time limit

Time for making application for permission to appeal, from judgment in the FtT	5 working days	28 calendar days (Rule 33(2) and (3))
Time for the FtT to give its decision whether to grant permission to appeal	5 working days	
10 working days		
Time for renewing application for permission to appeal to the UT, from FtT refusal of permission	5 working days	14 calendar days (Rule 21(aa)(i) of the UT Rules)
Time for the UT to give its decision whether to grant permission to appeal	5 working days	
10 working days		
Time for listing appeal in the UT from notice of permission being given	No time limit	No time limit
Time for UT giving judgment after hearing	No time limit	No time limit

32. In relation to permission to appeal a decision of the FtT, the previous UT rules specified time scales of 3 working days for the permission stage to the FtT and, if unsuccessful, a further 3 working days to renew the permission application in the UT. We have suggested replacing this with 5 working days for the appellant to make an application to the FtT and 5 working days to renew the application to the UT. We are also suggesting time limits of 5 working days for the FtT or UT to give its decision in each case. We are not suggesting including time limits for the UT to determine an onward appeal, given the small number of appeals that are successful in getting permission and the possibility that such cases may establish important legal principles.

33. An alternative approach however is for new fast track rules to introduce an overall 'long-stop' timeframe for detained appeals, setting the maximum time that may elapse between the Home Office's decision and the FtT's determination (except where the appeal is transferred out of the fast track), without specifying a time period for each stage of the appeal (save the time to lodge an appeal at the Tribunal). While this would provide certainty for all parties as to the length of the appeal process, it would require further, more detailed, judicial guidance for parties or an individual case management review for each case.

34. Key for the Government is the policy proposal that an overall long-stop timeframe of **25 working days** from Home Office decision to FtT determination (except where a case is transferred out of the fast track or the Tribunal consider it is in the interests of justice to adjourn for a period longer than these timescales as set out in the table above) would be appropriate in the FtT and a further 20 working days for any further permission stages.

35. We think this time limit strikes the right balance between speed and fairness and that the certainty provided would help all parties to the appeal to plan, prepare and submit

their strongest case. In addition the Tribunal's ability to seek and grant an adjournment would remain.

Question Four. Do you think the introduction of an overall timeframe is preferable to specific time limits for each stage? Please give reasons for your answer.

Question Five. Do you think 25 working days is sufficient time to dispose of an appeal in the First-tier Tribunal, and a further 20 working days sufficient time to determine whether an appellant has permission to appeal to the Upper Tribunal? If not, do you have a view on how long should be allowed for an appeal to be determined in the First-tier Tribunal and/or to determine whether an appellant has permission to appeal to the Upper Tribunal? Please give reasons for your answer.

Case Management Reviews

36. The Government acknowledges that there will be some detained cases which cannot properly be determined to an expedited timeframe, and we note the Court of Appeal's concern that the powers for adjournment and transfer out of the fast track did not provide sufficient safeguards in respect of the previous FTR. One approach to address this could be to provide an opportunity to hold a case management review as part of the appeal process. Case management is a judicial responsibility and it is for judges to determine when a case management hearing is necessary.

37. Currently, the majority of appellants do not apply for a case management review prior to the hearing even though there is a provision in the Principal Rules which allows them to do so. This may be because the issues in dispute are clear and the appellant understands what additional evidence, if any, they need to produce. In practice cases appear to be determined satisfactorily without an automatic case management review.

38. The question arises whether a case management review stage should be part of the revised fast track process allowing parties and the FtT to review the case before proceeding to the substantive hearing of the appeal. At the case management review hearing the FtT could hear arguments from both parties regarding the readiness of the case to proceed to full hearing, and if it considers it is not ready it could have the following options: i) adjourn the case to be relisted for substantive hearing within 15 working days, ii) adjourn the case and set another date the FtT considers reasonable (which may be longer than 15 working days) but keep the case in the Fast track process, or iii) remove the case from the fast track entirely and hear it under the Principal Rules.

39. These options could address the concerns identified by the Court of Appeal giving judges flexibility in the individual case to allow more time for preparing the appeal but still keeping the case within the fast track or allowing them to transfer a case out completely where it is in the interests of justice. We would welcome views on whether the Rules should include a specific fixed timescale by which a case should be listed for hearing following an adjournment (such as 15 working days).

40. The Government wants to make the most effective use of judicial resources and does not want there to be additional stages in the appeals process which might add delay for no obvious benefit to the parties. While the Principal Rules already provide for parties or their legal representatives to apply for a case management review, the Court

of Appeal expressed concern that this was not explicitly referred to in the previous FTR and that in reality the appellant would only seek a transfer out of the fast track at the appeal hearing itself, with the consequence that the appellant was required to argue that the evidence already submitted was insufficient[7]. The Court suggested that the Tribunal may be more sympathetic to an application to transfer out of the fast track if it were made at a case management hearing before the hearing, but noted that the timescales of the previous FTR did not permit this[8].

41. Therefore, given the Court of Appeal's views regarding the absence of a case management process before the substantive appeal hearing, we think that the best approach might be to have a paper review of each application with discretion for the Tribunal to direct a case management hearing, mirroring the flexibility of provisions in the Principal Rules.

Question Six. Do you think every appellant should have an opportunity to apply to a judge to have a case management review on the papers, with discretion for a judge to hold an oral case management review? Please give reasons for your answer.

Question Seven. Do you think the options the First-tier Tribunal has for adjourning cases at the case management review are right? If not, what options should the First-tier Tribunal have? Please give reasons for your answer.

Fee Exemptions

42. When fees were introduced in the Immigration and Asylum Chamber of the FtT in 2011 the Government decided to exempt from fees those people subject to the detained fast track process. At that stage the process applied only to detained asylum seekers, many of whom if not detained would have received asylum support including accommodation. The Government took the view at the time that, as the process constituted removal action initiated by the state, it was appropriate to remove any financial barriers to an appeal. In addition, not having a fee payment stage included within the appeal process for cases in the fast track prevented the risk of additional delay being introduced into the system, though the current fee regime does allow for the deferral of payment in some circumstances.

43. From 10 October 2016 the fees currently charged in the Immigration and Asylum Chamber of the FtT are £490 for a determination on the papers and £800 for an oral hearing. These fees represent the full cost of the services received by those that pay and they were implemented following a consultation exercise carried out between April and June 2016. The Government response to that consultation was published on 15 September and is available at the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553387/proposals-imm-asylum-chamber-consultation-response.pdf

44. Presently, most asylum seekers do not pay a fee because many qualify for one of the fee exemptions that currently exist in the FtT, principally those appellants in receipt of

[7] *At para 43 of the judgment*

[8] *At para 44 of the judgment*

Legal Aid and Asylum Support. The Lord Chancellor also has a discretionary power to reduce or remit fees in exceptional circumstances. In 2015/16, 20% of those lodging an asylum appeal paid a fee[9].

45. As this consultation document explains, the Government's proposal is that the new expedited appeals process would apply more widely than just detained asylum seekers - it would, additionally, apply to all other appellants who are detained. Therefore, if it is decided to proceed with the proposed new fast track appeals route, the Government must decide whether it is right, in principle, to offer an automatic fee exemption to all those subject to that procedure.

46. The Government's general principle is that those who use the immigration tribunals should pay the cost of the service they receive, unless they qualify for a fee exemption or their fees can be remitted under the Lord Chancellor's exceptional power. Anyone bringing an appeal subject to the fast track who qualifies for one of the existing exemptions that apply in the FtT will not have to pay a fee.

47. We do, however, accept that there may be arguments as to why detainees subject to the proposed fast track procedure might be in a different position to immigration and asylum appellants more generally. For this reason we are keen to seek the views of consultees on whether we should provide an additional fee exemption to cover all those who would be subject to the fast track. Providing such an exemption for all cases in a new appeal process could potentially result in HMCTS losing fee income of £610,000 per year.

Question Eight. Should appellants subject to the proposed new expedited appeals process be required to pay a fee in order to bring their appeal to the Immigration and Asylum Chamber of the First-tier Tribunal? Please give reasons for your answer.

Legal Aid

48. We will work to make sure that legal aid arrangements support delivery of the proposals in this consultation.

THE USE OF TIME LIMITS IN PRIMARY LEGISLATION

49. The fast track rules are not the only example of where rules have set out time limits for certain cases and functions of a tribunal. More recently the Civil Procedure Rules established time limits for each stage of a planning appeal in the Planning Court, and changes in the Children and Families Act 2014 introduced overall time limits for disposing of care proceedings within a maximum of 26 weeks, supported by procedural rules and guidance which sets out a more detailed timetable for each stage of the proceedings. One future option would be for the Government to take an order making power in primary legislation to introduce specific time-frames for particular types of appeal in tribunal rules for the Immigration and Asylum Chamber. It would then be for the TPC to make further rules subject to the overall timescale. An Order

[9] *Figures are derived from HMCTS internal management information. This information has not been quality assured under National Statistics protocols.*

could be debated in Parliament, bringing additional scrutiny to this important area of Government policy.

Question Nine. Do you agree that the Government should take a power in primary legislation to introduce and vary time limits for different types of immigration and asylum appeals? Please give reasons for your answer.

Impact Assessment

50. The Impact Assessment accompanying this consultation document provides details of the anticipated impact of implementing the proposals. We would welcome information and views on this to help us assess any potential impacts.

Question Ten. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Equalities Impacts

51. Under the Equality Act 2010 ('the Act') public authorities have an ongoing duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those with different 'protected characteristics'. In light of this obligation the Government has undertaken an assessment of the impact of its proposals on people with protected characteristics. The nine protected characteristics under the Act are: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Available Data

52. In making this assessment we have considered HMCTS data on FtT users. All immigration detainees are detained in accordance with the Home Office Adults at Risk policy.

53. Since 2011 HMCTS have attempted to improve their understanding of those who use the Immigration and Asylum Chamber by asking them to complete an optional questionnaire when they lodge their appeal. Given that completing the survey is optional and has only been completed by 13,266 appellants - or 3.3% of all appellants over the past 4 years - the information generated by it has limitations. The data only covers those who responded to the survey and not all respondents completed every question. These responses will not necessarily be representative of the Tribunal users who chose not to complete the survey.

54. It should also be recognised that this information only gives us details as to the characteristics of appellants in the FtT. It does not include information relating to appellants to the UT. We have made an assumption that the breakdown of appellants who take their appeals to the UT will be similar to the sample of appellants in the FtT in the absence of any evidence to contrary. The data gives us a snapshot of Tribunal users' protected characteristics and some indication of the likely equality impacts. The data, collected between January 2012 and February 2016, is set out in the table below.

Breakdown of appellant to the First-tier Tribunal (Immigration and Asylum Chamber) by protected characteristic.

	% of individuals
(a) Sex	
Adult male	53
Adult female	47
(b) Marital Status	
Married	60
Divorced	5
Never Married	35
(c) Race	
White	9
Black	32
Asian	46
Chinese	2
Mixed	4
Other	8
(d) Religion	
Buddhist	3
Christian	40
Hindu	8
Muslim	37
Sikh	4
Other	4
No religion	4
(e) Disability	
Disabled	5
Non-Disabled	95
(f) Age	
Under 16	6
16-24	13
25-34	35
35-44	23
45-54	12
55-64	6
65+	5
Percentages rounded to the nearest full percent	

55. The results reported in the table can be summarised as follows:

- **Sex**: from the survey respondents, a slightly higher proportion of men than women bring appeals.
- **Marital Status**: A majority (60%) of the appellants coming to the Tribunal are married.
- **Race**: A majority (92%) of the appellants coming to the Tribunal who responded to the optional survey were of Black and Minority ethnic backgrounds.
- **Religion**: The most common religions among appellants that answered the survey were Christian and Muslim.
- **Disability**: Only 5% of those who responded to the Survey disclosed that they had a disability or long term health problem.
- **Age**: Individuals between the ages of 25 and 34 are most likely to bring appeals before the Tribunal.

56. The data collected in the survey also gives us an indication as to likely nationalities of the appellants, by providing data relating to the most common first languages declared by appellants. Only 25% of respondents to the survey declared that English was their first language. Among the 75% of respondents to the survey who listed a language other than English there was a wide range of languages. The most common were Urdu, Punjabi, Bengali, French, Yoruba, Hindi, Tamil, Russian and Farsi which points to Asian nationalities being particularly over-represented among those likely to be affected compared to the general population of the UK.

Summary

57. Our assessment, based on the information available, is that the proposals would not be directly discriminatory within the meaning of the Act as they would apply to all appellants who bring appeals against an immigration decision while detained and would not treat people less favourably because of their protected characteristics. Eligibility for the fast track process would be based entirely on the fact that the person has an immigration appeal and is in immigration detention. The process would apply to all cases equally and there would be discretion and flexibility built into the system to ensure justice and fairness in each case. The proposals aim to limit the time appellants spend in detention whilst their appeals are being determined and to increase certainty in determining their appeal.

58. Schedule 2 to the Immigration Act 1971 (as amended by the Immigration Act 2014) places restrictions on the detention of unaccompanied children and section 60 of the Immigration Act 2016 places restrictions on the detention of pregnant women.

59. We have considered whether there is a potential for indirect discrimination. Based on the information available, our assessment is that, compared to the general population of the UK, there is likely to be over representation of people from Black, Asian and minority ethnic backgrounds, males, those who give their religion as Muslim, and those aged 25 - 34, who are detained while bringing an immigration appeal.

60. It is more likely, therefore, that such individuals would be subject to the fast track procedure. However, there is also a clear advantage in having appeals determined more quickly, with more certainty as to timing, and the rules would be there to ensure that speed and certainty are balanced against fairness in individual cases.

61. The Government is consulting on including all detained appellants appealing an immigration decision in the fast track process and would welcome views on whether

there are any categories of claims that should be excluded on the basis of a protected characteristic.

62. The Government is proposing that the new process should have safeguards to ensure cases can be transferred out of the fast track where it is in the interests of justice to do so. To achieve this the Government is consulting on proposals for judicial oversight of cases that enter the fast track appeals system including a case management review hearing where an individual's inclusion in the detained fast track process may be considered. The Government considers that this would help to mitigate any potential disadvantage based on a protected characteristic.

63. The Government does not consider there to be a risk of harassment or victimisation if these proposals were implemented.

64. We have considered how these proposals may impact on the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The earlier resolution of their claim could allow individuals to resettle sooner and we do not consider the proposals will have any detrimental impact on the advancement of equality of opportunity. We have also considered the need to foster good relations between persons who share a relevant protected characteristic and persons who do not but our current conclusion is that this is not relevant to the proposals being considered.

Seeking Further Information

65. To help the Government fulfil its duties under the Equality Act 2010 we would welcome information and views to help us gain a better understanding of the potential equality impacts that the proposals in this consultation might have.

Question Eleven. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Family Test

66. The Family Test is an internal Government challenge to departments to consider the impacts of their policies on promoting strong and stable families. We would welcome information and views of respondents on the impact these proposals may have on families.

Question Twelve. What do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. This questionnaire can also be completed online at **https://consult.justice.gov.uk/**

Question One. Do you agree that specific Rules are the best way to ensure an expedited appeals process for all detained appellants which is fair and just? If not, why not?

Question Two. Do you think that an expedited immigration appeals process should apply to all those who are detained? If not, why not?

Question Three. Do you have any other proposals for alternative criteria to select groups who would benefit from an expedited immigration appeal process?

Question Four. Do you think the introduction of an overall timeframe is preferable to specific time limits for each stage? Please give reasons for your answer

Question Five. Do you think 25 working days is sufficient time to dispose of an appeal in the First-tier Tribunal, and a further 20 working days sufficient time to determine whether an appellant has permission to appeal to the Upper Tribunal? If not, do you have a view on how long should be allowed for an appeal to be determined in the First-tier Tribunal and/or to determine whether an appellant has permission to appeal to the Upper Tribunal? Please give reasons for your answer

Question Six. Do you think every appeal should have a case management review on the papers, with discretion for a judge to hold an oral case management review? Please give reasons for your answer

Question Seven. Do you think the options the First-tier Tribunal has for adjourning cases at the case management review are right? If not, what options should the First-tier Tribunal have? Please give reasons for your answer

Question Eight. Should appellants subject to the proposed new expedited appeals process be required to pay a fee in order to bring their appeal to the Immigration and Asylum Chamber of the First-tier Tribunal? Please give reasons for your answer

Question Nine. Do you agree that the Government should take a power in primary legislation to introduce and vary time limits for different types of immigration and asylum appeals? Please give reasons for your answer.

Question Ten. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Question Eleven. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Question Twelve. What do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 22 November 2016 to:

Expedited Appeals Process Consultation Team

Administrative Justice
Ministry of Justice
3rd floor post point 3.32
102 Petty France
London SW1H 9AJ

Tel: 0203 334 3555

Email: admin.justice@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at https://consult.justice.gov.uk/.

Alternative format versions of this publication can be requested Detained Fast Track Consultation Team, 0203 334 3555 or admin.justice@justice.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available on-line at https://consult.justice.gov.uk/.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

https://www.gov.uk/government/publications/consultation-principles-guidance

Alternative format versions of this report are available on request from Expedited Appeals Process Consultation Team 0203 334 3555 or admin.justice@justice.gsi.gov.uk