EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) (AMENDMENT) RULES 2026

2026 No. 1084 (L. 16)

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sarah Sackman KC MP, Minister of State for Courts and Legal Services at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rawfiah Choudry, Deputy Director for Tribunals, Fees and Irregular Migration Policy at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Vijay Parkash at the Ministry of Justice can be contacted by email at the following address with any queries regarding this instrument: Vijay.Parkash@justice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instruments

What does the legislation do?

The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2026 ("the Amendment Rules")

4.1 The Amendment Rules make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Upper Tribunal Rules") to amend the procedure rules that apply in judicial review proceedings before the Upper Tribunal to align more closely with the Civil Procedure Rules ("the CPR") which apply to judicial review proceedings in the Administrative Court. This includes providing:

- that an applicant may provide a reply to an acknowledgment of service;
- that the tribunal has the discretion to hand down a decision that disposes of immigration judicial review hearings remotely, instead of solely at a hearing;
- a requirement that the application for permission to apply for judicial review which is to be provided by the applicant to any respondent or interested party must be sealed by the Upper Tribunal.

4.2 In addition, the Amendment Rules amend the Upper Tribunal Rules to reflect the new rights of appeal created by section 168(1) of the Online Safety Act 2023 ("the Act"). This provision gives a person with a sufficient interest the right, with permission, to appeal against certain decisions made by OFCOM. OFCOM is the regulator and competition authority for the United Kingdom communications industries. The amendment introduces a three-month time limit to bring applications for permission to appeal to challenge a decision of OFCOM's under section 168(1) of the Act. This time

limit is intended to align the time limits with similar application types that are already dealt with by the Upper Tribunal.

Where does the legislation extend to, and apply?

4.3 The territorial extent of the Amendment Rules (that is, the jurisdiction(s) of the Upper Tribunal in which the instrument forms part of the law) is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of the Amendment Rules (that is, where the instrument produces a practical effect) is the same as the application of the instrument to which the amendments relate. Practically, the amendments apply to proceedings in England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

Amendments that apply to judicial review proceedings

5.1 Following a request from the President of the Immigration and Asylum Chamber of the Upper Tribunal, the Tribunal Procedure Committee (TPC) ran a consultation between March and June 2026[1] on proposed amendments to the Upper Tribunal Rules that apply to judicial review proceedings in the Upper Tribunal. This consultation concerned whether changes should be made to clarify aspects of current procedure and, where appropriate, align the approach taken in the Upper Tribunal more closely with that of the Administrative Court in relation to judicial review proceedings.

5.2 The Amendment Rules make the following amendments:

- makes express provision for an applicant in judicial review proceedings to provide a reply to an acknowledgment of service. This provision mirrors the requirements of rule 54.8A of the Civil Procedure Rules ("CPR").
- omits rule 40(1A) and (1B) of the Upper Tribunal Rules, with the effect that a decision disposing of immigration judicial review proceedings can be handed down remotely, as opposed to solely at a hearing.
- amends rule 28A of the Upper Tribunal Rules to require an applicant to provide a sealed copy of application for permission to the respondent or interested party. This amendment aligns with CPR 54.7, which requires that a copy of the claim form served on the defendant or interested party.

5.3 The changes will ensure closer alignment with the CPR and avoid inconsistency with the judicial review procedure followed in both jurisdictions.

Amendments in respect of appeals under the Online Safety Act 2023

5.4 The Online Safety Act 2023 ("the Act") provides for a new regulatory framework with the general purpose of making the use of internet services safer for individuals in the United Kingdom. Regulatory decisions will be taken by OFCOM and appeals under the Act will be heard by the Administrative Appeals Chamber of the Upper Tribunal.

[1] https://www.gov.uk/government/consultations/possible-amendments-to-the-tribunal-procedure-upper-tribunal-rules-2008-in-respect-of-applications-for-judicial-review.)

5.5 Section 168 of the Act provides that an appeal may be brought by "any person with a sufficient interest" to the Upper Tribunal against OFCOM's decision to give to a person:

- a notice under section 121(1) of the Act. These are notices to deal with terrorism content and Child Sexual Exploitation and Abuse ("CSEA") content, known as 'technology notices' – these are a kind of notice which OFCOM can issue against providers of regulated services which requires them to use, or develop or source, certain types of technology for dealing with terrorism and CSEA content;
- a confirmation decision under section 132 of the Act. This is a decision finding a person – such as a provider of a regulated service - has failed to comply with a regulatory obligation; it may impose requirements for the provider to take steps to remedy the contravention and/or comply with a regulatory obligation and/or impose a financial penalty; or
- a penalty notice under sections 139, 140(5) or 141(6) of the Act. These are notices where a decision to impose a financial penalty for (i) failure to comply with steps set out in a confirmation decision; (ii) failure to comply with requirements set out in a technology notice; or (iii) failure to pay fees has been made.

5.6 Guidance on the exercise of OFCOM's functions under Chapter 5 of the Act that includes its publication obligations and the process for legal proceedings against its decisions related to section 121(1) notices of the Act to the Upper Tribunal is available here[2].

5.7 Following a proposal from OFCOM to amend the Upper Tribunal Rules to support the new rights of appeal created by the Act, the TPC conducted a consultation that ran from February to May 2026[3].

5.8 Having considered the consultation responses, the TPC has decided that there should be a three-month time limit (starting from the day after OFCOM publishes the relevant decision) for applications for permission to appeal by persons with a sufficient interest in OFCOM's regulatory decisions to be brought.

6. Legislative and Legal Context

How has the law changed?

6.1 The Amendment Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008.

6.2 The Amendment Rules make the amendments set out in paragraphs 5.1 to 5.8, for the reasons given in those paragraphs.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

[2] https://www.OFCOM.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-technology-notices/statement/updated-guidance-on-the-exercise-of-OFCOMs-functions-under-chapter-5-of-part-7-of-the-online-safety-act-2023.pdf?v=417188

[3] https://www.gov.uk/government/consultations/possible-amendments-to-the-tribunal-procedure-upper-tribunal-rules-2008-in-respect-of-appeals-under-the-online-safety-act-2023

7. Consultation

Summary of consultation outcomes

Consultation on amendments on possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of applications for judicial review

7.1 The TPC ran a consultation between March and June 2026 on proposed amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 relating to immigration judicial review proceedings in the Upper Tribunal (Immigration and Asylum Chamber).

7.2 The TPC sought views regarding potential amendment of the Upper Tribunal Rules governing the conduct of judicial review proceedings in the Upper Tribunal to reflect those which govern the conduct of judicial review proceedings in the Administrative Court in respect to:

- provision should be made in the Upper Tribunal Rules for an applicant to reply to an Acknowledgement of Service;
- an amendment to the Upper Tribunal Rules to remove the requirement that a decision which finally disposes of immigration judicial reviewing proceedings must be given at a hearing; and
- an amendment to the Upper Tribunal Rules for an applicant for judicial review to provide a sealed copy of any application for judicial review to a respondent or interested party.

7.3 A total of four responses were received. All four respondents generally supported the proposal that the rules governing the conduct of judicial review proceedings in the Upper Tribunal should reflect those which govern the conduct of judicial review proceedings in the Administrative Court.

7.4 Three respondents replied to the proposal that provision should be made in the Upper Tribunal Rules for an applicant to reply to an Acknowledgement of Service. Two respondents agreed without reservation. The remaining respondent did not object to the proposal in principle, but expressed concern that urgent cases might be prejudiced by the suggested requirement for replies to be filed within 7 days of an acknowledgment of service being provided.

7.5 In respect to the proposal that the Upper Tribunal Rules should be amended to remove the requirement that a decision which finally disposes of immigration judicial reviewing proceedings must be given at a hearing, three respondents replied and broadly supported the proposal. One respondent commented that although they agreed with the proposal, they noted that remote distribution runs a risk of emails being missed and delayed receipt (particularly in respect of litigants in person who are not required to sign up to the Upper Tribunal's e-filing system). Further details on the TPC's position is set out in its Response to the Consultation available here[4].

7.6 Having considered the consultation responses, the TPC has decided that it should take forward the proposals set out in their consultation paper, in the terms set out in paragraph 5.2.

[4] https://www.gov.uk/government/consultations/possible-amendments-to-the-tribunal-procedure-upper-tribunal-rules-2008-in-respect-of-applications-for-judicial-review

7.7 The TPC conducted a consultation that ran from February to May 2026, seeking views on two matters:

- whether it was appropriate to introduce a three-month time limit for applications for permission to appeal by persons with a sufficient interest in OFCOM's regulatory decisions under section 168(1) of the Act; and
- whether to change the default costs position so that the Upper Tribunal has greater discretion to award costs in cases under the Act.

7.8 A total of five responses were received. Four respondents supported the proposal to introduce a three-month time limit for applications for permission under section 168(1) of the Act. One respondent queried whether a longer period might be needed in certain cases.

7.9 In respect of the proposal to displace the usual rule that costs can only be made in the event of unreasonable conduct, four respondents disagreed with the proposal. One respondent did not oppose a costs-shifting rule but expressed caution about the chilling effect on public interest challenges, and said safeguards would be needed. In respect of changing the default costs position so that the Upper Tribunal has greater discretion to award costs in cases under the Act, the TPC decided that there is no reason to depart from the usual rule for costs in the Upper Tribunal, which is that costs should only be awarded where there has been unreasonable conduct. Further details on the TPC's position is set out in its Response to the Consultation available here.

7.10 In accordance with paragraph 28(1)(a) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007, the TPC has consulted such persons as it considers appropriate which includes individually with all relevant Government departments and stakeholders. This includes the Right Honourable Lord Justice Dove, the Chair of the Tribunal Procedure Committee, the Presidents of the Immigration and Asylum Chamber and the Administrative Appeals Chamber of the Upper Tribunal, and the Department for Business, Innovation, Science and Trade, who agree with the changes made by these Amendment Rules[5].

8. Applicable Guidance

8.1 His Majesty's Courts and Tribunals Service produces guidance for each tribunal jurisdiction, which is issued to parties at key stages of the appeals process, and is available here[6].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument as its impact is expected to be minimal, and well below the threshold of £5 million per annum at which an assessment must be prepared.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

[5] https://www.gov.uk/government/consultations/possible-amendments-to-the-tribunal-procedure-upper-tribunal-rules-2008-in-respect-of-applications-for-judicial-review

[6] https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about

9.3 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The MoJ and the TPC approach the monitoring of the impact of changes to the Tribunal Procedure Rules by way of feedback received from the Tribunals, His Majesty's Courts and Tribunals Service and tribunal users.

10.2 The Amendment Rules do not include a statutory review clause. The legislation applies to activities that are undertaken by small businesses as far as they may be appellants in proceedings before the Upper Tribunal.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are no matters of special interest to Parliament.

12. European Convention on Human Rights

12.1 The Amendment Rules are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 The Amendment Rules are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").