

Tribunal Procedure Committee

Consultation on possible changes to the First-tier Tribunal (Immigration and Asylum Chamber) Rules and the Upper Tribunal Rules arising from Nationality and Borders Act 2022

Introduction

1. The Tribunal Procedure Committee (the “TPC”) is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. Both are independent tribunals. The First-tier Tribunal is the first instance tribunal for most jurisdictions, while the Upper Tribunal is primarily responsible for appeals. Further information on Tribunals can be found on the HMCTS website at: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about#our-tribunals>
2. The TPC is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 (“the TCEA”), with the function of making Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal.
3. Under section 22(4) of the TCEA, power to make Tribunal Procedure Rules is to 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. In pursuing these aims the TPC seeks, among other things, to:
 - a) make the rules as simple and streamlined as possible;
 - b) avoid unnecessarily technical language;
 - c) enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - d) adopt common rules across tribunals wherever possible.

5. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
6. Further information on the TPC can be found at our website:
<https://www.gov.uk/government/organisations/tribunal-procedure-committee>

The First-tier Tribunal and the Upper Tribunal

7. The First-tier Tribunal (“F-t Tribunal”) is divided into chambers which group together jurisdictions dealing with like subjects or requiring similar skills.
8. The First-tier Tribunal (Immigration and Asylum Chamber) (the “F-t Tribunal IAC”) is responsible for deciding appeals against some decisions made by the Home Office relating to permission to stay in the UK, deportation from the UK and entry clearance to the UK. It also deals with applications for immigration bail from people being held by the Home Office on immigration matters. Further information on the F-t Tribunal IAC can be found at: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-immigration-and-asylum>
9. Likewise, the Upper Tribunal (“UT”) is divided into separate Chambers. The UT mainly, but not exclusively, decides appeals from the F-t Tribunal.
10. The Upper Tribunal (Immigration and Asylum Chamber) (the “Upper Tribunal (IAC)”) deals with appeals against decisions made by the F-t Tribunal IAC and with judicial reviews of certain decisions made by the Home Office relating to immigration, asylum and human rights claims. Further information on the Upper Tribunal (IAC) can be found at: <https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber>

Immigration Tribunal Rules

11. The procedural Rules that apply in the F-t Tribunal IAC are the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (“the F-t Tribunal IAC Rules”); those which apply in the Upper Tribunal (IAC) are the Tribunal Procedure (Upper Tribunal) Rules 2008 (the ‘Upper Tribunal Rules’).
12. The current F-t Tribunal IAC Rules and Upper Tribunal Rules can be found at:
<https://www.gov.uk/government/publications/immigration-and-asylum-chamber-tribunal-procedure-rules>
<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>

Nationality and Borders Act 2022

13. The Nationality and Borders Act (“NBA”) received royal assent on 28th April 2022. It made significant changes to the UK immigration system, following from the Home Office consultation ‘New Plan for Immigration’. A copy of the NBA Act and the consultation can be found at:

<https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>

<https://www.gov.uk/government/consultations/new-plan-for-immigration>

14. The majority of the NBA does not relate to matters within the TPC’s remit of Tribunal procedure rules. A number of sections of the NBA, however, require certain procedural rules to be made. These are:

- s19, which amends s8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to require Tribunal Procedural Rules to secure that the reasons produced by a Tribunal must include a statement explaining whether the Tribunal considers that the claimant has engaged in behaviour to which s8 applies (which, in broad terms, is behaviour designed or likely to conceal information, to mislead or to obstruct or delay the handling of an asylum claim) and, if so, how the Tribunal has taken account of that behaviour in making its decision.
- ss22, 23 and 24 which relate to rules arising from priority removal notices.
- s27 which relates to accelerated detained appeals.
- 54-55 which extend the F-t Tribunal’s jurisdiction to deal with age assessments.
- s80 which relates to the Tribunal having a charging power in respect of wasted Tribunal resources.
- s81 which requires Tribunal Procedure Rules to prescribe conduct that, in the absence of evidence to the contrary, is to be treated as improper, unreasonable or negligent in relation to costs orders.

15. The general approach of the NBA to Tribunal rules is a novel one in that it lays down in some detail the form that rules must take. This contrasts with the general statements of principle found in the TCEA and the enabling powers within the TCEA and other statutes, which generally empower the TPC to make rules, but do not require it to do so.

16. The practical effect of this approach is that significant policy decisions that might previously have rested with the TPC have been made by Parliament through the NBA. Nonetheless, the TPC is an independent body and is required to make rules (including those required by the NBA) in accordance with the principles laid down in the TCEA.

This consultation

17. Although the effect of the NBA is to require rules to be made in a particular form, it does not set out rules in full detail or address additional rules changes that may follow from its requirements. This means that there are a number of decisions as to appropriate

rules that will be made by the TPC in accordance with the requirements of both the TCEA and the NBA.

18. Given the significant volume of potential changes involved as a result of the NBA and the need for the TPC to consult on them, the TPC intends to proceed in two stages. This consultation will deal with rules changes arising from accelerated detained appeals, priority removal notices and age assessment. These are the matters which the TPC regards as the most significant arising for it from the NBA. The consultation also deals with s19 requirements relating to Tribunal reasons and credibility decisions, since this is, in drafting terms, a minor change.
19. The consultation also deals with a potential change to the rules in relation to expert witnesses. This is not required by provisions of the NBA. The New Plan for Immigration, however, did consider the possibility of greater use of joint experts within the IAC and the TPC understands from Ministry of Justice (“MoJ”) officials that further work is being considered in this area. This has led the TPC to consider the current rules regarding experts. The TPC is considering the possibility of harmonising them with similar rules in other chambers which explicitly provide for the possibility of a joint expert. This is also addressed in this consultation, since it is, in drafting terms, a minor change.
20. The TPC expects to launch a second consultation in 2023, dealing with the required changes to rules relating to costs.
21. As part of the work of preparing this consultation, members of the TPC have met with civil servants from both the Home Office and the MoJ responsible for the implementation of the relevant parts of the NBA. This has been done purely in order to more fully understand how other elements of the NBA (and the immigration system more generally) are expected to be implemented with a view to ensuring that the rules changes can be considered within the context in which they will operate. Reference in this consultation to information provided to the TPC is to information obtained through these meetings.
22. As part of the consultation, the TPC has produced indicative rules. These are provided within the consultation or in the appendices.

Priority Removal Notices

23. The NBA introduces a system of priority removal notices (“PRN”). A PRN is served on a person who is liable to removal or deportation. It requires that person, by a specified date (the “cut-off date”), to make a statement setting out grounds for seeking to remain in the UK. This statement must be accompanied by the information required as supporting those grounds and any evidence to support them.
24. If information is provided after the cut-off date specified by the PRN, it must be accompanied by an explanation as to why it was not produced before that date. Decision makers, including the First-Tier Tribunal IAC and Upper Tribunal (IAC), must take

account of the late provision of material as damaging the individual's credibility, unless there are good reasons why it was provided late.

25. Most importantly from the Tribunal rules perspective, s23 NBA provides, in certain circumstances, for an expedited appeal to the Upper Tribunal rather than the normal appeal to the First-tier Tribunal. This applies where a person has made a protection or human rights claim after the PRN cut-off date. If that person has the right to appeal from within the UK, and the Secretary of State has certified that he or she is satisfied there were no good reasons for the late claim, then the appeal is to the Upper Tribunal.

26. s23(4) NBA requires the TPC to make rules:

with a view to securing that expedited appeals are brought and determined more quickly than an appeal under s82(1) would, in the normal course of events, be brought and determined by the F-t Tribunal.

27. s24 NBA introduces the concept of related appeals. These arise where an individual subject to a PRN, who has brought an expedited appeal (under s23) also has a pending appeal before the F-t Tribunal when the expedited appeal is lodged. In such a case, the related appeal is to be transferred to the Upper Tribunal to be continued there alongside the expedited appeal. s24 NBA also means that any right to bring a related appeal to the F-t Tribunal is instead a right to appeal to the Upper Tribunal. These provisions seek to avoid a situation where an individual has appeals before both the F-t Tribunal and the Upper Tribunal simultaneously.

28. Both s23 and s24 require the TPC to provide rules that allow the Upper Tribunal to transfer an expedited or related appeal to the F-t Tribunal if it is satisfied that this is the only way to secure that justice is done in that appeal.

29. The overall effect of these provisions is to add a significant first instance jurisdiction to the Upper Tribunal's work.

Cohort and volumes

30. The cohort of appellants to whom rules relating to PRNs will apply will depend on how many PRNs are served and whether those on whom a PRN is served bring a claim prior to the specified date. Neither of these factors is something that can be affected by the Tribunal Rules.

31. In principle, it would be possible for anyone who is liable to removal or deportation to be served with a PRN. In practice, the TPC has been told that the current intention is that PRNs will be served only on Foreign National Offenders ("FNO") who do not have an ongoing application, appeal or modern slavery referral.

32. The TPC has been told that the expectation is that once the PRN system is fully established most new FNO referrals will be issued with a PRN, provided the Home Office

expects that they can be removed. Whether there is that expectation is likely to depend on how long their remaining sentence is, whether a travel document is available and whether removal to the return country is possible. Some FNOs will not be issued a PRN because the Home Office believes that alternatives, such as an Accelerated Detained Appeal or a s94B certification are more appropriate. The TPC has also been told that some existing FNO referrals will also be issued with PRNs.

33. There are approximately 6,000 new FNO referrals a year. The TPC has been told that the Home Office estimates that there are approximately 5,000 existing FNOs who might be issued with a PRN. The TPC has also been told, however, that this is a best estimate at present and that work will be carried out over the next six to twelve months to understand the true figure.
34. Not every PRN issued, however, will lead to an expedited appeal. Where a claim is brought before the cut-off date it will proceed in the normal way through the F-t Tribunal IAC, rather than as an expedited appeal. It is apparent that part of the policy intention behind the PRN system is to encourage such timely appeals. Additionally, where a claim is raised late, but the Home Office accepts that there are good reasons for the lateness, it will also proceed in the normal way through the F-t Tribunal.
35. The TPC understands that the Home Office and MoJ hope that, in the majority of cases, any claim will be received before the cut-off date and will therefore proceed through the normal route in the F-t Tribunal IAC. The TPC has been told that the Home Office estimates that in the first year (April 2023 to March 2024) approximately 2,000 PRNs will be issued. This is expected to generate approximately 200 expedited appeals between July 2023 and July 2024 (inevitably there will be delay between a PRN being issued and an expedited appeal arising). The TPC has been told that the number of PRNs issued may increase in 2024/25 and 2025/26 beyond 2,000 per year, but is not expected to exceed 6,000 per year.
36. The TPC has also been told that, if volumes of expedited appeals were to exceed 200 to any significant extent in the first year the Home Office would review their policy on the volume of PRN's being issued in 2024/25 or beyond. The outcome of such a review would depend on why expedited appeal volumes were higher than anticipated. It might involve delaying any increase in the number of PRNs issued, extending the cut-off dates or other changes to Home Office case work practices.
37. It should be noted, however, that these are not matters that can be affected by Tribunal Rules. The destination of appeals in these circumstances has been determined by the NBA and the issuing of PRNs is in the hands of the Home Office.
38. The TPC has also been told that it is expected that there will only be a small number of related appeals. This is because related appeals will only occur if an expedited appeal arises in a situation where there is an existing appeal before the First-tier. Since the Home Office does not intend, as a general rule, to serve PRNs on individuals with existing claims, this will be rare.

Upper Tribunal: General approach to rules for expedited and related appeals

39. Since expedited and related appeals are first instance cases that differ significantly from other work within the Upper Tribunal the TPC believes it is appropriate to deal with these rules in a separate schedule to the Upper Tribunal Rules. The TPC's view is that this is likely to be easier to understand and use, compared to seeking to accommodate these appeals within the body of the Upper Tribunal Rules.

Question 1: Do you agree that rules relating to expedited and related appeals should be contained in a separate schedule? If not, why not?

40. The TPC is considering what general approach is most suitable for expedited and related appeals in the Upper Tribunal. Broadly, the TPC believes there are two potential approaches.
41. The first approach would be to replicate the current system within the F-t Tribunal IAC following the recent reform process. In broad terms, this is to require a short form notice of appeal from an appellant, which is followed by a substantive response from the respondent. Once that has been filed, the appellant is required to reply, either by a formal skeleton argument (if professionally represented) or by a more informal explanation of where they disagree with the respondent (if they are a Litigant in Person).
42. The second approach would be to follow a more traditional appeal structure. This would require a substantive notice of appeal, which sets out the full grounds of appeal, followed by a substantive response from the respondent.
43. Draft Rules (indicatively drafted) in relation to both approaches are set out as Appendices to this consultation.
44. The TPC believes that there are potential benefits in both approaches. In general, the TPC believes that the post-reform approach has been a positive change in the F-t Tribunal IAC. It has assisted the F-t Tribunal IAC in clarifying the case ahead of the hearing and has allowed parties to focus on the key issues. It has also led to earlier withdrawals in circumstances in which the Respondent concluded that a decision should not be maintained. The TPC would hope that some of these benefits would also apply to appeals in the Upper Tribunal.
45. At the same time, a three-stage process will, in general, provide less scope for expediting the appeal process compared with the more traditional two stage process. In addition, it is likely, given the type of appeals that are expected to fall within the expedited process, that withdrawals by the respondent will be relatively rare. This means that one of the key benefits of the reform approach will be less relevant than it is in the general work in the F-t Tribunal IAC. The three-stage approach is also reliant on

the existence of IT systems and legal caseworkers to support it. It is not clear, at this stage, what resources of this kind will be available to the Upper Tribunal.

Question 2: What approach should the TPC take to drafting rules for expedited and related appeals? Should the TPC seek to replicate the current approach in the F-t Tribunal IAC or apply a more traditional appeal structure? If so, why?

Upper Tribunal Rules

Upper Tribunal Rules -- Timescales

46. The NBA requires the TPC to make rules with a view to having expedited and related appeals brought and determined more quickly than they would be in the F-t Tribunal IAC.
47. The TPC believes that the appropriate mechanism for doing so is to impose tighter deadlines in respect of the case management set out in the rules in relation to these appeals.
48. Currently the timescales for the standard case management steps in the F-t Tribunal IAC are:
 - a. Lodging Notice of Appeal ("NoA"): 28 days from the decision under appeal
 - b. Respondent's Response to NoA: 28 days from being sent NoA
 - c. Skeleton argument: 28 days from receiving the response or 42 days from the lodging of the NoA, whichever is later
 - d. Respondent's statement on issues: 14 days from provision of skeleton argument
49. Overall, this means that a case is expected to have completed the standard case management steps within approximately 98 days of the decision under appeal.
50. The Government has suggested to the TPC that appropriate expedited timescales would be:
 - a. Lodging NoA: 7 days from the decision under appeal
 - b. Respondent's Response to NoA: 14 days from being sent NoA
 - c. Skeleton argument: 14 days from receiving the response or 28 days from the lodging of the NoA, whichever is later
 - d. Respondent's statement on issues: 7 days from provision of skeleton argument
51. This would require cases to complete the standard case management steps within approximately 42 days of the decision under appeal.
52. The TPC view is that these deadlines suggested by the Government are too short to be practical. The TPC is also considering whether it is appropriate for an appellant to have less time in which to appeal a decision than the respondent has to respond to an appeal.

There might be some justification for this, given that the Notice of Appeal in a reform style process is brief and therefore might be thought quicker to produce than the more substantive response. This, however, is a matter the TPC intends to consider more fully in light of the responses to the consultation. Furthermore, setting timescales that are so short is likely to work against expedition in these cases by creating additional work and delays when deadlines cannot be met. In addition, potential appellants are likely to be entitled to legal aid in relation to their appeal. Obtaining representation and arranging legal aid is likely to take longer than 7 days. The TPC is also concerned that the proposed deadline in relation to the Respondent's statement on the issues may also be too short for there to be proper consideration at this stage.

53. The TPC is therefore considering two potential timetables. The first would adopt the suggestion of shorter deadlines for the lodging of the notice of appeal and the Respondent's statement on the issues. It would be as follows:
 - a. Lodging NoA: 14 days from the decision under appeal
 - b. Respondent's Response to NoA: 21 days from being sent NoA
 - c. Skeleton argument: 21 days from receiving the response or 35 days from the lodging of the NoA, whichever is later
 - d. Respondent's statement on issues: 10 days from provision of skeleton argument.
54. The second potential timetable would maintain divide time more equally and be as follows:
 - a. Lodging NoA: 14 days from the decision under appeal
 - b. Respondent's Response to NoA: 14 days from being sent NoA
 - c. Skeleton argument: 21 days from receiving the response or 35 days from the lodging of the NoA, whichever is later
 - d. Respondent's statement on issues: 21 days from provision of skeleton argument.
55. The TPC believes that this provides a more appropriate balance between expedition and practicality. It would require cases to complete the standard case management steps within approximately 66 days.
56. Since the TPC is also consulting on the possibility of a more traditional appeal process in these cases, it is also necessary to consider the timetables that might apply in such a system.
57. Prior to the changes made as part of the reform process, the F-t Tribunal IAC followed the following timetable:
 - a. Lodging NoA: 28 days from the decision under appeal
 - b. Respondent's Response: 28 days from being sent NoA
58. The TPC is considering rules applying a deadline of 21 days to both the Notice of Appeal and Respondent's Response, if this approach is taken.

Question 3: Do you agree with the timeframes suggested by the TPC? If not, what alternative timeframe would you suggest and why?

Upper Tribunal: Further case management / Transfer to the F-t Tribunal

59. Section 23(5) NBA requires Tribunal Rules to allow for an expedited appeal to be transferred from the Upper Tribunal to the F-t Tribunal in certain circumstances:

Tribunal Procedure Rules must secure that the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in the case of a particular expedited appeal, order that the appeal is to be continued as an appeal to the First-tier Tribunal and accordingly is to be transferred to that Tribunal.

60. Section 24(7) NBA contains a similar requirement in relation to a related appeal.

61. The circumstances in which a transfer can be made will be limited, since they only arise where the Upper Tribunal is satisfied that a transfer is the only way to secure that justice can be done. In practice it is difficult to envisage circumstances in which the Upper Tribunal would conclude that it was unable to ensure justice could be done in relation to an appeal, such that the only way of obtaining a just result was to transfer an appeal to the First-Tier. Hypothetically, it might arise if the number of expedited appeals overwhelmed the Upper Tribunal's resources to the point where potential delays meant that justice could not be done. This, however, would likely only arise in exceptional circumstances and suggest that something fundamental had gone wrong with the operation of the PRN regime, the resourcing of the Upper Tribunal or both.

62. Nonetheless, the TPC is required by the NBA to provide Rules in this form and therefore is considering the following Rule:

Transfer to First-tier Tribunal

6 (1) Where satisfied it is the only way to secure that justice is done in a particular Expedited Appeal or Expedited Related Appeal, the Upper Tribunal may make a determination that an Expedited Appeal and/or Expedited Related Appeal be continued as an appeal or appeals to the First-tier Tribunal, giving written reasons for the determination and any directions it considers appropriate.

(2) The Upper Tribunal may on its own initiative or upon an application from a party consider whether to make a determination in accordance with sub-paragraph (1).

(3) A determination made under sub-paragraph (1) with the written reasons and any order giving directions shall be sent by the Upper Tribunal to the First-tier Tribunal and to the parties to the appeal.

Question 4: Do you agree with the proposed Rule 6? If not, why not?

Upper Tribunal: Transfer of expedited related appeals from the First-tier Tribunal

63. The First-tier Tribunal will need to transfer related appeals to the Upper Tribunal. The TPC is considering the following rule to allow time-limits provided in the First-tier Rules or directions made by the First-tier Tribunal to persist in the Upper Tribunal, until the Upper Tribunal has had an opportunity to consider the appeal and make its own directions.

Transfer of related appeals from the First-tier Tribunal

7 Where a related appeal is transferred to the Upper tribunal from the First-tier Tribunal any time limits provided by the First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014 or by any directions which apply to the related appeal shall continue to apply as if they had been made by the Upper Tribunal until further directions are made by the Upper Tribunal.

Question 5: Do you agree with the proposed Rule 7? If not, why not?

F-t Tribunal IAC Rules

64. The First-tier Tribunal will need to transfer related appeals to the Upper Tribunal and expedited / related appeals may be transferred from the Upper Tribunal to the First-tier Tribunal. The TPC is considering appropriate changes to the Rules to deal with these transfers.

65. The rules changes being considered are:

To insert into the definitions section:

“expedited appeal” means an appeal to the Upper Tribunal under section 82A of the Nationality Immigration and Asylum Act 2002;

“expedited related appeal” means an appeal related to an expedited appeal in the circumstances described by section 24(5) of the Nationality and Borders Act 2022;

“related appeal” has the meaning provided by section 24(2) of the Nationality and Borders Act 2022;

To insert as a new rule 24B:

“Expedited Appeals and Related Expedited Appeals to and from the Upper Tribunal

24B. (1) Where a pending appeal becomes a related appeal in proceedings before the Upper Tribunal it must be transferred to the Upper Tribunal.

(2) Where the Upper Tribunal makes a determination in respect of an Expedited Appeal or Expedited Related Appeal under paragraph 7(1) to Schedule 5 of the Upper Tribunal Procedure Rules 2008, such appeals continue as appeals before the First-tier Tribunal and are subject to these rules.

(3) Any time limits provided by the Tribunal Procedure (Upper Tribunal) Rules 2008 and any directions made by the Upper Tribunal which apply to the expedited appeal or expedited related appeal shall continue to apply as if they had been made by the First-tier Tribunal until such time as the parties are notified of any further directions made by the Tribunal.

(4) Upon notification from the Upper Tribunal of a determination referred to in paragraph 3, the Tribunal shall review the appeal or appeals, including any directions given by the Upper Tribunal related to that determination, and give such additional directions as it considers to be appropriate.”

66. These rules seek to achieve a number of objectives. First, to confirm that the Tribunal will transfer related appeals to the Upper Tribunal Second, to provide for expedited and related appeals to be transferred from the Upper Tribunal to the First-tier and to allow directions related to those cases, made by the Upper Tribunal, to persist until the First-tier makes its own directions.

Question 6: Do you agree with the proposed First-tier Tribunal Rules? If not, why not?

Other comments / views

67. The TPC also welcomes any other comments on the proposed rules or suggestions relating to the Rules pertaining to PRNs.

Question 7: Do you have any other comments on the suggested rules relating to PRNs?

Accelerated Detained Appeals

Background

68. When the F-t Tribunal IAC and its corresponding Upper Tribunal Chamber were established in 2010 the existing Asylum and Immigration (Procedure) Rules 2005 (“AIT Rules”) were ordered to have effect as Tribunal Procedure Rules for the F-t Tribunal IAC, and only necessary amendments for the purpose of the transfer were made. The AIT Rules contained a system of Detained Fast Track intended to expedite the resolution of cases involving detained appellants.

69. In 2014 the AIT Rules were replaced by rules drafted by and consulted on by the TPC. These also included provision, in a schedule, for a ‘Detained Fast Track’ set of rules. These applied to most, but not all, appeals where an individual was appealing a decision in relation to asylum and was in immigration detention.

70. In June 2015, the High Court concluded that the Detained Fast Track rules were unlawful 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). Mr Justice Nicol concluded that the Detained Fast Track rules were structurally unfair, because their shortened timetable and the restricted case management powers available to judges created a serious procedural disadvantage that could be imposed on appellants by the respondent to an appeal.

71. This decision was upheld by the Court of Appeal in *Lord Chancellor v Detention Action [2015] EWCA Civ 840*.
72. In October 2016, the MoJ launched a consultation: *Immigration and Asylum Appeals: Consultation on proposals to expedite appeals by immigration detainees*. In April 2017, the Government's response to the consultation set out its view that there was a need for specific rules in respect of appellants in detention. This was because the Government believed that only specific rules would achieve a guaranteed maximum timeframe for determining detained appeals. The Government therefore proposed that the TPC consider such rules, with the suggestion that such rules should achieve a maximum timeframe from beginning to end of 25 working days.
73. Copies of the MoJ consultation and response can be found at:
<https://consult.justice.gov.uk/digital-communications/expedited-immigration-appeals-detained-appellants/>
74. The TPC launched a consultation on 12th July 2018 and published its consultation response in June 2019. Both consultation and response are available at:
<https://www.gov.uk/government/consultations/consultation-on-tribunal-procedure-first-tier-tribunal-immigration-and-asylum-chamber-rules-2014-and-tribunal-procedure-upper-tribunal-rules-200>
75. The TPC decided not to introduce specific rules for detained cases. It concluded that some cases could fairly be decided within an accelerated procedure and a system of accelerated procedural rules could be operated fairly. This, however, would require rigorous procedural safeguards to ensure that unsuitable cases were not included in the procedure. In particular, the TPC concluded that there would need to be an early oral case management hearing for all cases where an appellant was in immigration detention. That hearing would determine whether an appeal should be heard under the Principal Rules or any 'fast track' rules. This would ensure an adequate safeguard against cases being dealt with unfairly. The time and resources required to operate that safeguard, however, would absorb considerable resources and, ultimately, mean that, taking the system as a whole, the expedition sought by the government would not be achieved.
76. It should be noted, however, that this conclusion was based on the Government's previously proposed approach whereby all detained cases would be, at least initially, placed within the Detained Fast Track system. The 'accelerated detained appeals'

("ADA") system established by the NBA has some pertinent differences. In particular the cohort of detainees who will fall within the accelerated process will be limited by regulation, and by certification by the Secretary of State of the relevant decision, as appropriate for accelerated determination.

Section 27 Nationality and Borders Act 2022

77. Section 27 of the NBA sets out requirements for ADAs as follows:

27 Accelerated detained appeals

(1) In this section "accelerated detained appeal" means a relevant appeal (see subsection (6)) brought—

(a) by a person who—

(i) was detained under a relevant detention provision (see subsection (7)) at the time at which they were given notice of the decision which is the subject of the appeal, and

(ii) remains in detention under a relevant detention provision, and

(b) against a decision that—

(i) is of a description prescribed by regulations made by the Secretary of State, and

(ii) when made, was certified by the Secretary of State under this section.

(2) The Secretary of State may only certify a decision under this section if the Secretary of State considers that any relevant appeal brought in relation to the decision would likely be disposed of expeditiously.

(3) Tribunal Procedure Rules must secure that the following time limits apply in relation to an accelerated detained appeal—

(a) any notice of appeal must be given to the First-tier Tribunal not later than 5 working days after the date on which the appellant was given notice of the decision against which the appeal is brought;

(b) the First-tier Tribunal must make a decision on the appeal, and give notice of that decision to the parties, not later than 25 working days after the date on which the appellant gave notice of appeal to the tribunal;

(c) any application (whether to the First-tier Tribunal or the Upper Tribunal) for permission to appeal to the Upper Tribunal must be determined by the tribunal concerned not later than 20 working days after the date on which the applicant was given notice of the First-tier Tribunal's decision.

(4) A relevant appeal ceases to be an accelerated detained appeal on the appellant being released from detention under any relevant detention provision.

(5) Tribunal Procedure Rules must secure that the First-tier Tribunal or (as the case may be) the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is

done in a particular case, order that a relevant appeal is to cease to be an accelerated detained appeal.

(6) For the purposes of this section, a “relevant appeal” is an appeal to the First-tier Tribunal under any of the following—

- (a) section 82(1) of the Nationality, Immigration and Asylum Act 2002 (appeals in respect of protection and human rights claims);
- (b) section 40A of the British Nationality Act 1981 (appeal against deprivation of citizenship);
- (c) the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (SI 2020/61) (appeal rights in respect of EU citizens' rights immigration decisions etc);
- (d) regulation 36 of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) (appeals against EEA decisions) as it continues to have effect following its revocation.

(7) For the purposes of this section, a “relevant detention provision” is any of the following—

- (a) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
- (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
- (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal);
- (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).

(8) In this section “working day” means any day except—

- (a) a Saturday or Sunday, Christmas Day, Good Friday or 26 to 31 December, and
- (b) any day that is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the appellant concerned is detained.

(9) Regulations under this section are subject to negative resolution procedure.

78. In broad terms this requires the TPC to make provision for accelerated detained appeals rules within which appeals must be lodged within 5 working days of the decision being appealed and the F-t Tribunal IAC must then make a decision on that appeal within 25 working days. Any application for permission to appeal, whether to the First-tier or Upper Tribunal, must then be determined within 20 working days.

79. It follows from this that the decision as to whether there should be an accelerated detained appeal system and the timescales involved is one that has been taken by Parliament. The existence of an accelerated detained appeal system and its overall time frame is no longer a question for the TPC and therefore does not form part of this consultation.

General Approach to Accelerated Detained Appeals

80. Given that any accelerated system for dealing with the appeals of those in detention will differ significantly from the principal F-t Tribunal Rules, the TPC considers it appropriate to create a separate schedule of 'Accelerated Detained' rules within the F-t Tribunal Rules. The TPC's view is that this is likely to be easier to understand and use, compared to seeking to implement an accelerated detained process within the main rules.

Question 8: Do you agree that rules relating to accelerated detained appeals should be contained in a separate schedule? If not, why not?

81. The TPC's initial view is that it is desirable for ADA to follow a similar process to that recently established in the F-t Tribunal following the recent reform process. This means that, rather than being required to produce detailed grounds of appeal to bring a case, the initial notice of appeal will require only limited information. The Respondent would then provide a substantive response, which is then followed by a reply from the appellant.

Question 9: Do you agree that accelerated detained appeals should follow a similar approach to that currently operating in the F-t Tribunal IAC, rather than a more traditional sequence? If not, why not?

82. The TPC has also therefore drafted indicative rules for the purpose of consultation. These are contained in an appendix to this consultation. Although the overall timescale involved within the accelerated detained process has been set by the primary legislation, the TPC has needed to consider appropriate deadlines for the interim stages of the process. The TPC welcomes views on the suitability of these, bearing in mind that it is necessary to meet the overall deadline provided by s27 and therefore any lengthening of time at one stage will require a commensurate shortening of time at another.

Question 10: Do you agree with the deadlines proposed in the draft rules? If not, why not?

Scope of the Rules / Cohort of cases

83. The scope of the accelerated detained rules is determined by s27(1) NBA. It is therefore not a matter within the TPC's purview and not a subject of this consultation.

84. Nonetheless, it is useful to set out shortly the TPC's understanding of the scope of these rules. This is because, in considering appropriate rules, the nature and number of cases to which those rules will apply is important.

85. s27 NBA limits use of the accelerated system to cases where the following criteria apply:

- The appeal is an appeal to the F-t Tribunal under one of the following:

- a) s2(1) of the Nationality, Immigration and Asylum Act 2002 (appeals in respect of protection and human rights claims);
- b) s40A of the British Nationality Act 1981 (appeal against deprivation of citizenship);
- c) the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61) (appeal rights in respect of EU citizens' rights immigration decisions etc);
- d) reg 36 of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (appeals against EEA decisions) as it continues to have effect following its revocation.

- The appeal is brought by a person who was detained under a relevant detention provision (as specified in the section) at the time at which they were given notice of the decision which is the subject of the appeal;
- The person who brought the appeal remains in detention under a relevant detention provision;
- The decision being appealed, when made, was certified by the Secretary of State as suitable for ADA; a decision can only be certified if the Secretary of State considers that any appeal to the decision in question would be likely to be determined by the Tribunal within the accelerated timescales.
- The decision being appealed is of a description prescribed by regulations made by the Secretary of State.

86. The regulations referred to in the final bullet are not within the purview of the TPC, but are a matter for the Secretary of State. The TPC has been told they have not yet been finalised. The TPC has been told that the Home Office's current intention is that the regulations will include provisions dealing with:

- a. The criteria by which a case will be considered when determining whether it is suitable for the ADA process. This is likely to include consideration of the ability of the individual to be able to fairly present their case, give evidence on their appeal and instruct lawyers within the ADA timescales.
- b. A requirement that once a case is certified as suitable for ADA that their place of detention has the required facilities to support an individual during that process. This is likely to include requirements in relation to the provision of legal advice / legal aid, interpretation services, IT infrastructure, videoconferences facilities, access to phones and meeting rooms.

87. The TPC has also been told that Home Office and the MoJ expect that substantive ADA hearings will only take place in person at Harmondsworth and Yarl's Wood Hearing Centres.
88. The TPC has made enquires of both MoJ and the Home Office as to what safeguards are intended, within the Home Office and MOJ, to ensure that only suitable cases are put into / remain within the accelerated process. MoJ and Home Office have indicated that they intend to implement the following safeguards:
- The Home Office will ensure an effective screening process is in place before entry into the accelerated process;
 - Decisions to detain will be made in accordance with the Home Office Detention Policy and Adults at Risk in Detention Policy, which seek to identify potential vulnerability and take it into account when deciding whether to detain;
 - Decisions to detain will be reviewed by the operationally independent Home Office Detention Gatekeeper team;
 - The Home Office will regularly review detention in accordance with Home Office Detention policy
89. These are matters outside the purview of the TPC, since they do not relate to the procedural rules. The TPC will however, need to consider to what extent the government safeguards will prevent unsuitable appeals entering the accelerated detained system and the implications of this for the appropriate rules.

Removal from accelerated detained rules

90. Under the provisions of s27, NBA appeals will need to be removed from the accelerated process in two circumstances. First, where the individual ceases to be detained (s27(4) NBA). Second, where the Tribunal concludes that removal from the process is the only way to secure that justice is done in a particular case (s27(5) NBA).
91. These provisions are reflected in the draft rules. Draft Rule 2(1) limits the scope of the Accelerated Detained rules. This includes a criteria that the individual "remains in detention" under a relevant detention provision. If this ceases to apply, draft Rule 1(6) alongside draft Rule 2(1) will disapply the Accelerated Detained rules and apply the Principal Rules.
92. Draft Rule 17 allows the Tribunal to order that the accelerated detained rules will cease to apply where the Tribunal concludes that removal is the only way to secure that justice is done in a particular case. This has the effect of returning an appeal to be determined under the Principal Rules.
93. The TPC anticipates that the issue of whether the Tribunal should conclude that removal from the accelerated process is the only way to secure justice will arise frequently. This

has been the practical reality of all previous systems of accelerated resolution of appeal involving those subject to immigration detention.

94. The TPC believes that it is appropriate for the rules to provide for an initial assessment of an appeal to determine whether it is suitable for an accelerated approach. This is addressed in more detail below.
95. The TPC has also considered whether it is desirable for there to be other rules relating to the removal of cases from the accelerated process. It would be possible for rules to lay down a procedure for applications that a case is unsuitable for the accelerated process to be made to the Tribunal and to identify the factors that a Tribunal should consider in reaching its decision.
96. The TPC, however, has reached a preliminary view that this would not be helpful. The Tribunal is likely to have to consider a wide range of appeals, in a wide range of circumstances. The TPC believes that elaborating on the wording contained in s27 as to when an appeal should be removed from the accelerated system is likely to add complexity and confusion to the legal test being applied, rather than clarify it. Further, there are likely to be a wide range of circumstances in which removal from the accelerated system should be considered. In some cases both parties will agree that a case is not suitable. In many cases the issue will be raised by an appellant. In some it will be raised by the Respondent or considered by the Tribunal of its own initiative. The underlying factual scenarios that might give rise to such consideration are also highly varied. The TPC believes that the best approach is to provide a general power to the Tribunal and allow it to be exercised in accordance with the wider case management powers of the Tribunal.
97. Draft Rule 17(2) confirms that the Tribunal may make a determination under Rule 17 at any time and on its own initiative as well as on application by a party. This is not intended to make any substantive difference to the Rule 17 power (since Rule 5 already contains similar provisions). It does, however, ensure that Rule 17 is unambiguous. The TPC was concerned that the existence of the Suitability review (see below) might give the impression that Rule 17 would only be considered then.

Question 11: Do you agree with the approach to removal of an appeal from the accelerated detained rules contained in draft Rule 17? If not, why not?

Question 12: If you believe there should be any rule in addition to draft Rule 17, what rule would be desirable and why?

Suitability Assessment

98. As noted above, the TPC is considering whether there should be a rule dealing with an initial assessment of an appeal, to determine whether it is appropriate to be determined within the system of accelerated appeal.

99. The TPC believes that it is desirable for there to be a Rule requiring the Tribunal to consider, prior to a substantive hearing, whether justice can be done in a particular appeal within the accelerated process.
100. There are a number of reasons for this. First, in applying an accelerated process to an important category of appeals there is a risk of serious injustice if it is applied to inappropriate cases. It is right, therefore, that there be judicial consideration at a relatively early stage to ensure that unsuitable cases are removed from the accelerated process. Second, there are significant practical advantages for both parties and the Tribunal in having a consistent approach to that consideration set out in the rules. If parties are aware that, at a particular stage, the Tribunal will consider these matters, there can be a standard practice for this consideration. This is likely to be both more effective and more efficient than for parties or the Tribunal raising these issues in an ad hoc manner. Third, the earlier in the process questions of suitability can be considered and resolved, the better for both parties and the Tribunal.
101. The TPC has given thought to when any suitability review should take place. It is important for the suitability review to take place as early in the process as possible. Unsuitable appeals should be removed from the accelerated process as soon as possible. Further, where a Tribunal concludes that an appeal is suitable it is desirable for the parties to know that as soon as possible. At the same time, it is important that the suitability review occurs only once the nature of the appeal has become apparent and the issues had some opportunity to crystallise. A review that occurs too early in the process is unlikely to be effective. It is also likely to lead to further applications to remove an appeal from the accelerated process later in the process on the grounds that the circumstances have changed or relevant matters have not been fully considered.
102. The TPC believes the appropriate balance between these factors lies in the suitability review taking place:
- a. If the Rules follow the current approach of the F-t Tribunal, shortly after the provision of the appellant's skeleton argument.
 - b. If the Rules follow a more traditional approach, shortly after the provision of the Respondent's Response.
103. The TPC is therefore considering the following rule:

10 Suitability review

- (1) 16 working days after the Tribunal receives a notice of appeal the Tribunal must hold a review to decide whether justice can be done in relation to the appeal within the accelerated detained rules.
- (2) A party may provide submissions and evidence for consideration at that review at any time prior to two working days before the review.

104. The TPC is also considering the form that the suitability review should take and, in particular, to what extent an oral hearing should be required. The TPC has identified four possibilities: a) the review invariably taking place at a hearing; b) parties having the right to a hearing if they request one; c) the parties having the right to request a hearing, but no right to a hearing and d) the review invariably taking place on paper.
105. The TPC recognises that if oral hearings are required in all suitability reviews that is likely to place considerable burdens on both the parties and the Tribunal itself. Such hearings will involve significant resources both in preparation and attendance at the hearing. They would also require tribunal estate, administrative support and judicial resources. If a party was entitled to a hearing only if they expressly sought a hearing, the overall burden would be less, but still significant.
106. The TPC considers, however that an oral hearing is likely to be more effective than a paper determination in assessing whether a case is suitable for accelerated determination.
107. The TPC welcomes therefore all views and evidence on the extent to which oral hearings are necessary to carry out an effective suitability review.

Question 13: Do you agree with the requirement of a suitability review contained in draft Rule 10? If not, why not?

Question 14: If there is to be a suitability review contained in the rules, when should it take place, and why?

Question 15: If there is to be a suitability review contained in the rules, to what extent should the rules require it to take place at a hearing, rather than being considered on the papers? Why?

Question 16: Do you have any further comments on the suitability review issue or the drafting of Rule 10?

Application for Permission to appeal

108. Section 27(3)(c) NBA imposes a requirement on the Tribunal Procedure Rules in relation to applications for permission to appeal. Rules must secure that any application for permission to appeal must be determined by the F-t Tribunal no later than 20 working days after the person applying for permission to appeal was given notice of the Tribunal's decision.
109. This means that the First-tier and Upper Tribunal rules must be drafted in such a way that any application for permission to appeal is, overall, dealt with within 20 working days. The First-tier element of this process is dealt with in Rule 13 of the draft rules:

13 Procedure for making an application for permission to appeal

(1) An application for permission to appeal to the Upper Tribunal must be provided to the Tribunal so that it is received no later than 5 working days after the date on which the party making the application was provided with notice of the decision.

(2) An application under paragraph (1) must-

(a) identify the decision of the tribunal to which it relates;

(b) identify the alleged errors of law in the decision; and

(c) state the result that the party making the application is seeking.

(3) The Tribunal must consider whether to grant permission to appeal in relation to the decision mentioned in sub-paragraph (2)(a), or any part of that decision, and send a written notice to the appellant and the respondent no later than 5 working days after the date on which it received the application mentioned in paragraph (1).

(4) The written notice mentioned in paragraph (3) must contain the reasons why permission is or is not granted.

Question 17: Do you agree with the draft Rule 13? If not, why not?

Upper Tribunal Rules

110. Accelerated detained appeals primarily concern the F-t Tribunal. Section 27(3)(c) NBA, however, does impose a requirement on rules for the Upper Tribunal that an application for permission to appeal must be resolved within 20 days.

111. The TPC is therefore considering the following amendments.

112. In relation to Rule 1 (Citation, commencement, application and interpretation) the TPC is considering adding the following definitions that pertain to these appeals:

“the 2022 Act” means the Nationality and Borders Act 2022;

“Accelerated detained appeal” means an appeal against a decision of the First-Tier Tribunal, in a case where-

(a) the appellant was detained under a detention provision set out in section 28(7) of the 2022 Act at the time at which they were given notice of the decision which is the subject of the appeal and remains in detention under that detention provision;

(b) the decision of the Secretary of State against which the appellant appealed in the First-Tier Tribunal is a decision-

(i) falling within the definition in section 28(6) of the 2022 Act, and

(ii) is of a description prescribed by regulations made by the Secretary of State under section 28(1)(b)(i) of that Act, and

(iii) which, when made, was certified by the Secretary of State under section 28 of that Act.

(c) the First-Tier Tribunal has not made a determination under paragraph 17 to schedule xx of the First-tier Tribunal rules that it is not possible for justice to be done in relation to the appeal within the Accelerated Detained Rules.

113. In order to implement the necessary time-limits, the TPC is considering amending Rules 21, 22 and 22A. In summary, these proposed Rules will add new time limits for applying for permission to appeal in an Accelerated Detained Appeal and for the Upper Tribunal making a decision on that application, while disapplying the time-limits that would otherwise apply.

114. In relation to the time-limit for applying for permission, the TPC is considering a new Rule 21(3)(ab) as follows:

in an asylum or immigration case that is an Accelerated Detained Appeal, 5 working days after the date on which notice of the First-Tier Tribunal's refusal of permission was provided to or received by the appellant;

115. In relation to the decision on permission to appeal, the TPC is considering a new Rule 22B as follows:

22B Special procedure for permission to appeal decisions in Accelerated Detained Appeals

(1) Within 5 working days of the date on which the Upper Tribunal received the application for permission to appeal pursuant to rule 21(3)(ab) the Upper Tribunal must-

- (a) make a decision as to whether to grant permission to appeal; and
- (b) notify the appellant and the respondent of that decision in writing.

(2) The notification mentioned in paragraph (1)(b) must contain the reasons why the Upper Tribunal refused or granted permission to appeal.

116. In order to disapply other rules, the TPC is considering a new Rule 22(2A) and 22A(1A) as follows:

22(2A) In relation to Accelerated Detained Appeals, paragraphs (1) and (2) do not apply but instead rule 22B (special procedure for permission to appeal decisions and notice thereof in Accelerated Detained Appeals) applies.

22A(1A) This rule does not apply to an immigration case that is an Accelerated Detained Appeal.

117. The TPC is also considering whether it is desirable for there to be an express rule allowing the Upper Tribunal to extend time in relation to applications for permission to appeal in ADA appeals (in effect transferring the appeal out of the ADA process). The

TPC does not believe that an express rule is required for the Upper Tribunal to have that power, since the general power to extend time contained in rule 5(3)(a) would apply in any event. The TPC is considering, however, whether an express rule might be desirable in order to a) automatically extend time where an individual ceases to be detained and b) ensure that it is clear that the Upper Tribunal is able to extend time in these circumstances.

118. The TPC would expect that such a rule would apply on in rare circumstances. If an appeal had reached this stage under the accelerated process it will be unusual that the individual will either be released from detention while the Upper Tribunal is considering the application for permission for appeal or that time needed to be extended for some other reason. The TPC is also considering whether an express rule might give the impression that the general power to extend time would not apply without such a rule – if this is the case it might create confusion in relation to other types of appeal.

119. The TPC therefore welcomes views on a new Rule 22C (Transfer out of the Accelerated Detained Appeal Procedure) as follows:

22C (Transfer out of the Accelerated Detained Appeal Procedure)

(1) If in an asylum or immigration case that is an Accelerated Detained Appeal at any time between-

- (a) the day on which the appellant received notice of the First-Tier Tribunal's decision to refuse permission to appeal, and
- (b) the day mentioned in rule 21(3)(ab),

the appellant ceases to be detained under a detention provision mentioned in section 28(7) of the 2022 Act, rule 21(3)(ab) ceases to apply and instead rule 21(3)(aa) or, as the case may be 21(3)(b), applies.

(2) If in an immigration case that is an Accelerated Detained Appeal at any time –

- (a) after the day mentioned in rule 21(3)(ab), and
- (b) before the Upper Tribunal makes a decision under 22B(1)(a),

the appellant ceases to be detained under a detention provision mentioned in section 28(7) of the 2022 Act, rule 22B(3)(a) ceases to apply and instead rule 22 or, as the case may be, 22A applies.

(3) The Upper Tribunal may extend the time for complying with Rule 21(3)(ab) or 22B(1) if the Upper Tribunal determines that an extension is necessary for justice to be done in relation to the appeal.

Question 18: Do you agree with the proposed changes to the UT Rules? If not, why not?

Other comments / views

120. The TPC also welcomes any other comments on the proposed rules or suggestions relating to the Rules pertaining Accelerated Detained Appeals.

Question 19: Do you have any other comments on the rules relating to Accelerated Detained Appeals?

Age Assessments

121. There are many circumstances in which the age of an individual is important and might be subject to a dispute. It is important in the immigration context, because of the Home Office's responsibilities for identifying unaccompanied children from amongst those seeking asylum. It is also important to local authorities who have statutory responsibility to provide services to children, including education and care / support when the child lacks a responsible adult.

122. In practice, disputes about an individual's age are most likely to arise where an individual is an immigrant to the UK and is to some degree undocumented. This might occur because of the risks associated with retrieval of documents from the country of origin, practical difficulties accessing documents or where there is insufficient knowledge of a person's background to identify where documents could be obtained.

123. The NBA makes changes to age assessments of those under immigration control, including defining an age-disputed person, setting the parameters for who the new provisions in the Bill apply to, establishing a 'designated person' to conduct age assessments upon referral by Local Authorities or any other public body as specified in regulations and enabling the specification of scientific age assessment methods in regulations.

124. The TPC has been told that the Home Office intends to establish a National Age Assessment Board ("NAAB") to which designated persons will be assigned for the purpose of undertaking age assessments.

125. s54 allows for appeal from such decisions to the F-t Tribunal. It is therefore necessary to consider what rules changes may be necessary or desirable to deal with these appeals.

126. Generally, the TPC believes that the existing rules can be applied to appeals arising from age assessment without substantial variation. The existing processes which the F-t Tribunal applies to other appeals can be appropriately applied to age assessment appeals. The TPC does, however, believe that certain changes are necessary, which are considered below.

Rule 1 – Definition

127. The TPC is considering adding a definition of age assessment appeals to Rule 1 (Citation, commencement, application and interpretation) as follows:

“age assessment appeal” means an appeal under section 54(2) of the Nationality and Borders Act 2022

Rule 16 – Abandoned appeals

128. s55(3) NBA requires that, if a person who brings an age assessment appeal leaves the UK before the appeal is determined, that appeal is to be treated as abandoned. The TPC therefore believes that it is appropriate to add age assessment cases to the list of categories of case at Rule 16(2). This will require the F-t Tribunal IAC to notify the parties where it is treating an appeal as abandoned.

129. Rule 16(2) would therefore be amended to read:

Where an appeal is treated as abandoned pursuant to section 92(8) or 104(4A) of the 2002 Act or paragraph 4(2) of Schedule 2 to 2006 Regulations or regulation 13(3) of the 2020 Regulations *or section 55(2) of the Nationality and Borders Act 2022*, the Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned.

Rule 19 – Appeal must be brought from within the UK

130. s55(2) requires that an age assessment appeal must be brought from within the United Kingdom. The TPC is considering whether reflecting this provision in the rules would be helpful. The TPC does not normally incorporate points of substantive law into the rules. The TPC is concerned, however, that Rule 19 refers to appeals from outside the UK in the context of providing for different time-limits and that this might give the misleading impression that an age assessment appeal could be brought from outside the UK.

131. The TPC is therefore considering adding a Rule 19(9) as follows:

An age assessment appeal must be brought from within the United Kingdom.

Interim Relief

132. Section 55(4) NBA provides for interim relief in an age assessment appeal as follows:

The person who brings the appeal may make an application to the First-tier Tribunal for an order that, until the appeal is finally determined, withdrawn or abandoned, the local authority must exercise its functions under relevant children’s legislation in

relation to the person on the basis that they are the age that they claim (or are claimed) to be.

133. The TPC is therefore considering a potential rules changes to add a new rule 24B (Interim Relief in age assessment appeals) as follows:

In an age assessment appeal the appellant may apply to the Tribunal for interim relief under section 55(4) of the nationality and Borders Act 2022.

134. The TPC expects that, in the majority of appeals, any application for interim relief will be made at an early stage; probably at the point that an appeal is lodged. At present, however, the TPC does not think it is appropriate to require applications to be made at a particular time. The TPC does not believe that an express rule is necessary to achieve this, but it may provide useful guidance.

Question 20: Do you agree with the proposed rule 24B? If not, why not?

135. At present the TPC does not believe that interim relief applications will require additional rule. The TPC expects that such applications will be dealt with using the Tribunal's existing case-management powers, which allow for parties to be instructed to provide evidence, submissions and to attend hearings.

Question 21: Do you believe that any further rules changes are needed to deal with interim relief applications? If so, what changes and why?

Interested Parties

136. The MoJ have suggested to the TPC that, in order to facilitate age assessment appeals, the TPC should produce rules to introduce the concept of interested parties into the F-t Tribunal.
137. The concept of interested parties does exist within the rules for which the TPC has responsibility. It is present in the Property Chamber Rules; the Health Education and Social Care Chamber and in the Upper Tribunal Rules. In these jurisdictions the concept of the interested party is used to allow someone who is affected by the outcome of the litigation, but is not an appellant or respondent to become a party to an appeal.
138. The IAC Rule do allow for the addition of the United Kingdom Representative of the United Nations High Commissioner for Refugees to be added as a party to an appeal, but do not otherwise allow for interested parties.
139. The MoJ's suggestion is advanced, broadly, on three grounds. First that it may be necessary for local authorities to be added as an interested party where interim relief is sought, so that any decision made by the F-t Tribunal will be binding on them.

140. The TPC's current view is that this is not necessary. s54(5) NBA provides that the Tribunal's decision in an age assessment appeal is binding on both the Secretary of State and the Local Authority. It does not require either to be a party for this to apply. With regards to applications for interim relief, if an order is granted then s55(4) requires that a local authority must exercise its functions in accordance with the order. Again, s55(4) does not require the local authority to be a party to the appeal in order for the order to be binding on them. The TPC is therefore not currently persuaded that it is necessary to introduce an interested party rule on this basis.
141. The second basis for the suggestion is that both the Home Office and the local authority have an interest in the outcome of age assessment appeals, since they will be binding upon them. As a matter of natural justice, therefore, they should be able to participate in appeals as a party. In addition, they may have relevant information to contribute to appeal proceedings. For example, this may arise where an initial determination of age is made by the Home Office, but not accepted by a local authority, leading to an age assessment by a designated person. In such a case, the Home Office may hold information relevant to an individual age or their initial determination.
142. In addition, where there is an allegation that a document has been forged, the MoJ suggests that it is the Home Office who will be in a position to provide evidence and submissions on that issue. Since the Tribunal's consideration of forged documents may take place in private (see s55(6) NBA) such involvement would be facilitated by the Home Office being an interested party.
143. The third basis for the suggestion is that, at present, age assessment are contested through judicial review proceedings and that these would allow for either the Home Office or the local authority to be added as an interested party where appropriate. It is suggested that this option should be preserved.
144. The TPC will consider whether an interested party rule is appropriate in age assessment cases and welcomes views from stakeholders.

Question 22: Do you think that there should be an interested party rule in age assessment cases? Why?

Credibility and Tribunal Reasons

145. Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, requires decision makers dealing with an asylum or human rights claim to take account, as damaging the claimant's credibility, of certain behaviour.
146. This includes behaviour that the decision maker thinks is designed or likely to conceal information, designed or likely to mislead, or designed or likely to obstruct or delay the handling of a claim or the taking of a decision in relation to a claimant. The F-t Tribunal IAC is a decision maker for the purposes of s8.

147. Certain more specific actions are required to be as treated as designed or likely to conceal information to mislead for these purposes:

- a. failure to produce a passport on request by an immigration officer or to the secretary of state,
- b. producing something that is not a valid passport as if it was one,
- c. destruction, alteration, or disposal of a passport without reasonable explanation,
- d. failure to answer a question asked by a decision maker without reasonable explanation.
- e. failure to take advantage of a reasonably opportunity to make an asylum claim or human rights claim while in a safe country.
- f. failure to make an asylum claim or human rights claim before being notified of an immigration decision, unless that claim relies wholly on matters arising after the notification,
- g. failure to make an asylum or human rights claim before being arrested under an immigration provision, unless the claimant had no reasonable opportunity to make the claim before being arrested or the claim relies wholly on matters arising after the arrest.

148. S19 of the NBA adds a new s8(1A) to the section, requiring that:

Tribunal Procedure Rules must secure that, where the deciding authority is the First-tier Tribunal, it must include, as part of its reasons for a decision that disposes of proceedings, a statement explaining—

- a) whether it considers that the claimant has engaged in behaviour to which this section applies, and
- b) if it considers that the claimant has engaged in such behaviour, how it has taken account of the behaviour in making its decision.

149. s22 of the NBA creates a similar requirement where a person is subject to a priority removal notice and provides material after the cut-off date.

150. In order to comply with s8(1A), the TPC is considering a new rule 29(3A) as follows:

(3A) Where the decision of the Tribunal disposes of proceedings to which the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 or section 22 of the Nationality and Borders Act 2022 applies the Tribunal must include in its reasons a statement explaining

- (a) whether it considers the appellant has engaged in behaviour to which section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applies and if so, how it has taken account of the behaviour, in making its decision;
- (b) whether it considers section 22 of the Nationality and Borders Act 2022 applies and if so, how it has taken account of the provision of late material, in making its decision.

151. The TPC does not consider that this proposed amendment makes a significant difference to the requirements on the Tribunal to produce reasons. Tribunals are already required to provide reasons for their decisions and, where s8 is relevant, this will include a duty to explain how the Tribunal has applied its provisions.
152. The proposed amendment, however, ensures that this is clear and complies with the requirement placed on the TPC by s8(1A).

Question 23: Do you agree that Rule 29(3A) should be amended as proposed in order to give effect to s8(1A) Asylum and Immigration (Treatment of Claimants etc) Act 2004 and s22 NBA? If not, why not?

Experts

153. One element of the 'New Plan for Immigration' is the possible greater use of single joint experts and the possibility of a single joint expert procedure.
154. At present the TPC does not intend to embark upon consultation on detailed rules changes to facilitate a single joint expert procedure. In part, this is because of the resource limitations discussed above and, in part, because at present the TPC is not satisfied that a greater use of joint experts requires substantive changes in the existing rules.
155. In considering this issue, however, the TPC has identified a disparity between the F-t Tribunal IAC Rules relating to experts and similar rules in other Chambers.
156. The relevant F-t Tribunal IAC Rule on experts is Rule 14:

Evidence and submissions

14.—(1) Without restriction on the general powers in rule 4 (case management powers), the Tribunal may give directions as to—

...

(c) whether the parties are permitted or required to provide expert evidence;

157. In contrast, the equivalent rule in the First-tier Tribunal (Health, Education and Social Care Chamber) Rules allows the Tribunal to give directions as to:

whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

158. The same, wider, formulation of the rules is found in the General Regulatory Chamber, Property Chamber and War Pensions and Armed Forces Compensation Chamber Rules. The Social Entitlement Chamber Rules are the same as the F-t Tribunal IAC.

159. The TPC does not believe that this was intended to create a difference between the Chambers in relation to case management powers for experts. On balance the TPC's view is that the F-t Tribunal IAC (and for that matter the SEC) would have the same powers to order parties to jointly appoint a single expert as other Chambers. This is because Tribunals have a wide power to manage their own procedure, in accordance with the Rules, and the general case management powers in both Rule 4 and 14 are expressed permissively.
160. Despite this, the TPC has concluded that it would be sensible to harmonise the F-t Tribunal IAC Rules with other Chambers that have significant use of experts, such as HESC and Property. This will also avoid any ambiguity as to the F-t Tribunal IAC's power to manage the use of joint experts by case management order.
161. The TPC is therefore considering amending Rule 14(1)(c) to read:

whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

Question 24: Do you agree that Rule 14 should be amended to harmonise it with similar Rules in other Chambers? If not, why not?

Consultation Questions

162. The TPC is interested to receive your views on possible changes. When responding, please keep in mind that the rules should be simple and easy to follow. They should not impose unnecessary requirements or unnecessarily repeat requirements that are contained elsewhere. The TPC must secure the objectives set out in section 22(4) of the TCEA and it aims to do so in a consistent manner across all jurisdictions.
163. In general, the TPC regards consultation responses as public documents. They may be published by the TPC and referred to in its Reply to the Consultation.
164. If you would prefer your response to be kept confidential, you should be aware that information you provide, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 and the Data Protection Act 2018.
165. 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, by itself, be regarded as binding on the TPC.

How to Respond

Contact Details

Please reply using the response questionnaire template.

Please send your response by **19 January 2023** to:

Secretary to the Tribunal Procedure Committee
Access to Justice Directorate
Policy, Communications and Analysis Group
Ministry of Justice
Post Point: 5B.49
102 Petty France
London
SW1H 9AJ
United Kingdom

Email: tpcsecretariat@justice.gov.uk

Extra copies of this consultation document can be obtained using the above contact details or online at: <http://www.justice.gov.uk/about/moj/advisory-groups/Tribunal-procedure-committee/ts-committee-open-consultations>

Appendix A – Rules related to Priority Removal Notices, reflecting current First-tier approach

Upper Tribunal

SCHEDULE 5 Rule 26D

Procedure in Expedited Appeals and Expedited Related Appeals

Interpretation

1. In this Schedule

“expedited appeal” means an appeal to the Upper Tribunal under section 82A of the Nationality Immigration and Asylum Act 2002;

“expedited related appeal” means an appeal related to an expedited appeal in the circumstances described by section 24(5) of the Nationality and Borders Act 2022;

“pending” has the meaning provided by section 24(8) of the Nationality and Borders Act 2022;

“related appeal” has the meaning provided by section 24(2) of the Nationality and Borders Act 2022;

Notice of Appeal – Expedited Appeal

2.—(1) A notice of appeal must be made in writing and received by the Upper Tribunal no later than 14 days after the appellant received the notice of decision against which the appeal is brought.

(2) The notice of appeal must provide—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) if no representative is named under sub-paragraph (b), an email address and the postal address where they are living, if they have one where documents for the appellant may be sent or delivered;
- (d) which of the statutory grounds of appeal the appellant relies on;
- (e) details of any Related Appeal pending including the tribunal case reference number, a copy of any directions given and any hearing date listed;
- (f) details of any other Expedited Appeal pending including the tribunal case reference number, a copy of any directions given and any hearing date listed; and
- (g) details of any other asylum or immigration decision or outstanding decision of the respondent relating to the appellant.

(3) The appellant must provide with the notice of appeal a copy of—

- (a) the notice of decision against which the appellant is appealing or if it is not practicable to include the notice of decision, the reasons why it is not practicable;
- (b) any documents in support of the appellant’s case which have not been supplied to the respondent;

(d) any further information or documents required by an applicable practice direction.

(4) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by sub-paragraph (1) or time allowed under rule 5(3)(a) (power to extend time)—

(a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and

(b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must not admit the notice of appeal.

(5) At the time the appellant files the notice of appeal with the Upper Tribunal a copy must be sent to the respondent.

Respondent's response to the notice of appeal

3. (1) When a respondent is provided with a copy of a notice of appeal, the respondent must provide the Upper Tribunal and the appellant with the following documents and information if not provided with the notice of appeal—

(a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;

(b) any statement of evidence or application form completed by the appellant;

(c) any record of an interview with the appellant in relation to the decision being appealed;

(d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent;

(e) any documents provided to the respondent in support of the original application;

(f) details of any other pending Expedited Appeal or pending Related Appeal, including the notices of decision in such cases; and

(g) details of any other asylum or immigration decision or outstanding decision of the respondent relating to the appellant.

(2) The documents and information listed in sub-paragraph (1) must be provided within 21 days of the date on which the respondent received the notice of appeal and any accompanying documents or information provided under paragraph 2.

Further Steps

4. (1) Following receipt of the documents and information required by paragraph 3, the appellant must provide the Upper Tribunal and the respondent with-

(a) an appeal skeleton argument (or equivalent in relation to an appellant who is unrepresented) which complies with any relevant Practice Direction; and

(b) copies of the evidence relied upon in the appeal skeleton argument (or equivalent in relation to an appellant who is unrepresented), insofar as that evidence is not already contained in the documents provided by the appellant with the notice of appeal or by the respondent under paragraph 3.

(2) The appellant must provide the documents specified in sub-paragraph (1) no later than 21 days after receipt of the documents under paragraph 3 or, as the case may be, or no later

than 28 days after the date the notice of appeal was received by the Upper Tribunal, whichever is the later.

(3) The respondent must no later than 7 days after receipt of the appellant's documents under sub-paragraph (1) provide to the Upper Tribunal and the appellant a written statement which complies with any relevant practice direction, of whether the respondent opposes all or part of the appellant's case and if so the grounds for such opposition.

(4) A practice direction may disapply the requirement in sub-paragraph (1) in a specified category of case.

Cases where an existing Expedited Appeal or Expedited Related Appeal is referred to in the notice of appeal

5. (1) in cases where the appeal notice or the information provided by the respondent under paragraph 3 gives details of an existing Expedited Appeal or Related Appeal, the Upper Tribunal shall promptly review the information provided to:

- (a) determine whether any appeal so notified is an existing Expedited Appeal or a Related Appeal in accordance with the provisions of section 24 of the Nationality and Borders Act 2022; and
- (b) if so, provide both parties with such further directions as it considers appropriate.

(2) Such directions shall aim to secure that both appeals are heard together by the Upper Tribunal, and in particular will set out:

- (a) the dates for the requirements set out in paragraphs 2, 3 and 4 to be met for a Related Expedited Appeal if, or insofar as, they have not already been met; and
- (b) that if either party considers it is not capable of complying with the directions provided it must make an application to the Upper Tribunal to vary the directions made within 7 days of being sent those directions.

(3) Any time limits provided by the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and any directions made by the First-tier Tribunal which apply to the expedited related appeal shall continue to apply as if they had been made by the Upper Tribunal until further directions are made by the Upper Tribunal.

Transfer to First-Tier Tribunal

6. (1) Where satisfied it is the only way to secure that justice is done in a particular Expedited Appeal or Expedited Related Appeal, the Upper Tribunal may make a determination that an Expedited Appeal and/or Expedited Related Appeal be continued as an appeal or appeals to the First-Tier Tribunal, giving written reasons for the determination and any directions it considers appropriate.

(2) The Upper Tribunal may on its own motion or upon an application from a party consider whether to make a determination in accordance with sub-paragraph (1).

(3) A determination made under sub-paragraph (1) with the written reasons and any order giving directions shall be sent by the Upper Tribunal to the First-Tier (Immigration and Asylum) Tribunal and to the parties to the appeal.

Appendix B – Rules related to Priority Removal Notices, reflecting a more traditional appeal route

Upper Tribunal

SCHEDULE 5 Rule 26D

Procedure in Expedited Appeals and Expedited Related Appeals

Interpretation

1. In this Schedule

“expedited appeal” means an appeal to the Upper Tribunal under section 82A of the Nationality Immigration and Asylum Act 2002;

“expedited related appeal” means an appeal related to an expedited appeal in the circumstances described by section 24(5) of the Nationality and Borders Act 2022;

“pending” has the meaning provided by section 24(8) of the Nationality and Borders Act 2022;

“related appeal” has the meaning provided by section 24(2) of the Nationality and Borders Act 2022;

Notice of Appeal – Expedited Appeal

2.—(1) A notice of appeal must be made in writing and received by the Upper Tribunal no later than 28 days after the appellant received the notice of decision against which the appeal is brought.

(2) The notice of appeal must—

- (a) set out the grounds of appeal;
- (b) be signed and dated by the appellant or their representative;
- (c) if the notice of appeal is signed by the appellant’s representative, the representative must certify in the notice of appeal that it has been completed in accordance with the appellant’s instructions;

(3) The notice of appeal must provide—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) if no representative is named under sub-paragraph (b), an email address and the postal address where they are living, if they have one where documents for the appellant may be sent or delivered;
- (d) which of the statutory grounds of appeal the appellant relies on;
- (e) details of any Related Appeal pending including the tribunal case reference number, a copy of any directions given and any hearing date listed;

- (f) details of any other Expedited Appeal pending including the tribunal case reference number, a copy of any directions given and any hearing date listed; and
- (g) details of any other asylum or immigration decision or outstanding decision of the respondent relating to the appellant.

- (4) The appellant must provide with the notice of appeal a copy of—
- (a) the notice of decision against which the appellant is appealing or if it is not practicable to include the notice of decision, the reasons why it is not practicable;
 - (b) any documents in support of the appellant’s case which have not been supplied to the respondent;
 - (d) any further information or documents required by an applicable practice direction.

- (5) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by sub-paragraph (1) or time allowed under rule 5(3)(a) (power to extend time)—
- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
 - (b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must not admit the notice of appeal.

- (5) At the time the appellant files the notice of appeal with the Upper Tribunal a copy must be sent to the respondent.

Respondent’s response to the notice of appeal

3. (1) When a respondent is provided with a copy of a notice of appeal, the respondent must provide the Upper Tribunal and the appellant with the following documents and information if not provided with the notice of appeal—

- (a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;
- (b) any statement of evidence or application form completed by the appellant;
- (c) any record of an interview with the appellant in relation to the decision being appealed;
- (d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent;
- (e) any documents provided to the respondent in support of the original application;
- (f) details of any other pending Expedited Appeal or pending Related Appeal, including the notices of decision in such cases; and
- (g) details of any other asylum or immigration decision or outstanding decision of the respondent relating to the appellant.

- (2) The documents and information listed in sub-paragraph (1) must be provided within 28 days of the date on which the respondent received the notice of appeal and any accompanying documents or information provided under paragraph 2.

Cases where an existing Expedited Appeal or Expedited Related Appeal is referred to in the notice of appeal

4. (1) in cases where the appeal notice or the information provided by the respondent under paragraph 3 gives details of an existing Expedited Appeal or Related Appeal, the Upper Tribunal shall promptly review the information provided to:

- (a) determine whether any appeal so notified is an existing Expedited Appeal or a Related Appeal in accordance with the provisions of section 24 of the Nationality and Borders Act 2022; and
- (b) if so, provide both parties with such further directions as it considers appropriate.

(2) Such directions shall aim to secure that both appeals are heard together by the Upper Tribunal, and in particular will set out:

- (a) the dates for the requirements set out in paragraphs 2, 3 and 4 to be met for a Related Expedited Appeal if, or insofar as, they have not already been met; and
- (b) that if either party considers it is not capable of complying with the directions provided it must make an application to the Upper Tribunal to vary the directions made within 7 days of being sent those directions.

(3) Any time limits provided by the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and any directions made by the First-tier Tribunal which apply to the expedited related appeal shall continue to apply as if they had been made by the Upper Tribunal until further directions are made by the Upper Tribunal.

Written Reasons

5(1) For Expedited Appeals and Expedited Related Appeals written reasons under paragraph 40 (3) must be provided within 10 days of the final hearing.

Transfer to First-Tier Tribunal

6. (1) Where satisfied it is the only way to secure that justice is done in a particular Expedited Appeal or Expedited Related Appeal, the Upper Tribunal may make a determination that an Expedited Appeal and/or Expedited Related Appeal be continued as an appeal or appeals to the First-Tier Tribunal, giving written reasons for the determination and any directions it considers appropriate.

(2) The Upper Tribunal may on its own initiative or upon an application from a party consider whether to make a determination in accordance with sub-paragraph (1).

(3) A determination made under sub-paragraph (1) with the written reasons and any order giving directions shall be sent by the Upper Tribunal to the First-Tier (Immigration and Asylum) Tribunal and to the parties to the appeal.

Appendix C – Rules related Accelerated Detained Appeals

Schedule [x] to the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Part 1 Introduction and scope

1 Interpretation and relationship with the Principal Rules

(1) The rules in this Schedule are the Accelerated Detained Rules.

(2) A rule or Part referred to in this Schedule by number alone means a rule in, or Part of, the Accelerated Detained Rules.

(3) In this Schedule-

(a) the 2022 Act means the Nationality and Borders Act 2022;

(b) “final hearing” means a hearing at which the Tribunal makes a decision which disposes of proceedings;

(c) the “Principal Rules” means rules 1 to 46 of the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014; and

(d) “working day” means any day except—

(a) a Saturday or Sunday, Christmas Day, Good Friday or 26 to 31 December, and

(b) any day that is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the appellant concerned is detained.

(4) The Principal Rules, except for those provisions referred to in paragraph (5) apply for the purposes of and the interpretation of the Accelerated Detained Rules.

(5) The provisions of the Principal Rules mentioned in paragraph (4) are rules 3(4), 4(3)(j), 7, 9(1), 19, 20, 22 (except for the purposes of paragraph (2)(a)), 23, 24, 24A, 25(b) and (c), 29(2) to (6), 33(2), 33(3), 33(5), 33(6), 34(1) and 35.

(6) Where the Accelerated Detained Rules cease to apply to an appeal or application because-

(a) the condition referred to in rule 2(1)(a) ceases to apply; or

(b) the Tribunal makes an order under rule 17,

the Principal Rules shall apply to the appeal or application.

(7) Where-

(a) a period of time for taking a step has started to run under a provision of the Accelerated Detained Rules, and

(b) that provision ceases to apply,

if the Principal Rules contain a time limit for taking such step, the time limit in the Principal Rules shall apply, and the relevant period of time shall be treated as running from the date on which the period of time under the Accelerated Detained Rules started to run.

2 Scope of the Accelerated Detained Rules

(1) The Accelerated Detained Rules apply to an appeal to the Tribunal or an application for permission to appeal to the Upper Tribunal where-

- (a) the appellant was detained under a detention provision set out in section 28(7) of the 2022 Act at the time at which they were given notice of the decision which is the subject of the appeal and remains in detention under any of those detention provisions;
- (b) the decision against which the appellant is appealing is a decision-
 - (i) whose appeal falls within the definition in section 28(6) of the 2022 Act, and
 - (ii) of a description prescribed by regulations made by the Secretary of State under section 28(1)(b)(i) of that Act, and
 - (iii) which, when made, was certified by the Secretary of State under section 28 of that Act.

Part 2

Appeals to the Tribunal

3. Provision of notice of appeal to the Tribunal

- (1) An appellant must start proceedings by providing a notice of appeal to the Tribunal.
- (2) The notice of appeal must be received not later than 5 working days after the appellant receives the notice of the decision against which the appeal is brought.

4. Contents of, and documents to accompany, the notice of appeal

- (1) The notice of appeal must—
 - (a) identify which of the available statutory grounds of appeal are relied upon, and
 - (b) be signed and dated by the appellant or their representative.
- (2) If the notice of appeal is signed by the appellant’s representative, the representative must certify in the notice of appeal that it has been completed in accordance with the appellant’s instructions.
- (3) The appellant must provide with the notice of appeal—
 - (a) the notice of decision against which the appellant is appealing or if it is not practicable to include the notice of decision, the reasons why it is not practicable;
 - (b) any statement of reasons for that decision;
 - (c) any documents in support of the appellant’s case which have not been supplied to the respondent;
 - (d) any further information or documents required by an applicable practice direction.

5. Steps to be taken by the Tribunal upon receipt of the notice of appeal

- (1) On the day on which the Tribunal receives a notice of appeal, it must:
 - (a) provide to the respondent a copy of the notice of appeal and the accompanying documents or information provided by the appellant to the respondent;
 - (b) list the appeal for a final hearing;
 - (c) provide both parties with directions which set out:
 - (i) the date of the final hearing mentioned in paragraph (1)(b);
 - (ii) the dates on which the actions required by rules 8(2), 9(2) and 9(3) must be completed; and
 - (iii) that if at any time either party considers it is not capable of completing the actions required by rules 8(2), 9(2) or 9(3) within the timescales set out

therein, it must make an application to the Tribunal for permission to vary the timescales set out in rules 8 and 9.

(2) The hearing mentioned in paragraph (1)(b) must be listed for the date 22 working days after the day on which the Tribunal was provided with the notice of appeal.

6. Late notice of appeal

(1) Where a notice of appeal is provided outside the time limit in rule 3(2), the notice of appeal must include an application for an extension of time and the reasons why the notice of appeal was not provided in time.

(2) If, upon receipt of a notice of appeal, the notice appears to the Tribunal to have been provided outside the time limit mentioned in rule 3(2) and no application has been made for an extension of time, the Tribunal must notify the person in writing that it proposes to treat the notice of appeal as being out of time.

(3) Where the Tribunal gives notification under paragraph (2), the person may by written notice to the Tribunal contend that—

(a) the notice of appeal was given in time, or

(b) time for providing the notice of appeal should be extended,

and, if so, that person may provide the Tribunal with written evidence in support of that contention.

(4) The Tribunal must decide any issue under this rule as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as soon as reasonably practicable after the day on which the Tribunal receives a notice of appeal, and may do so without a hearing.

(5) Where the Tribunal makes a decision under this rule it must provide to the parties written notice of its decision, including its reasons, not later than 1 working day after the date on which that decision was made.

(6) If the Tribunal decides that a notice of appeal was provided outside the time limit in rule 3(2) and does not extend the time for appealing, it shall take no further action in relation to the appeal after it has given the notice mentioned in paragraph (5).

7. Late notice of appeal – special provision for imminent removal cases

(1) This rule applies in any case to which rule 6 applies, where the respondent notifies the Tribunal that directions have been given for the removal of that person from the United Kingdom on a date within 5 days of the date on which the notice of appeal was received.

(2) The Tribunal must, if reasonably practicable, make any decision under rule 6 before the date and time proposed for the removal.

(3) Rule 6 applies, subject to the modifications that the Tribunal may—

(a) give notification under rule 6(2) orally, which may include giving it by telephone,

(b) direct a time for providing evidence under rule 6(3), and

(c) direct that evidence in support of a contention under rule 6(3) is to be given orally, which may include requiring the evidence to be given by telephone, and hold a hearing for the purpose of receiving such evidence.

8. Respondent's response to the notice of appeal

(1) When a respondent is provided with a copy of a notice of appeal, the respondent must provide the Tribunal with —

- (a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;
 - (b) any statement of evidence or application form completed by the appellant;
 - (c) any record of an interview with the appellant in relation to the decision being appealed;
 - (d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent;
 - (e) the notice of any other appealable decision made in relation to the appellant; and
 - (f) any documents provided to the respondent in support of the original application.
- (2) The documents listed in paragraph (1) must be provided in writing not later than 3 working days after the date on which the Tribunal sent to the respondent a copy of the notice of appeal and any accompanying documents or information provided under rule 5(1)(a).

9. Further steps

- (1) If the appellant is represented, upon the respondent complying with rule 8(1) the appellant must provide the Tribunal with-
- (a) an appeal skeleton argument which complies with any relevant Practice Direction; and
 - (b) copies of the evidence relied upon in the appeal skeleton argument or, as the case may be, appellant's explanation of case, insofar as that evidence is not already contained in the documents provided by the respondent under rule 8(1).
- (2) The documents in paragraph (1) must be provided to the Tribunal not later than 9 working days after the date on which the respondent complies with rule 8(1).
- (3) The respondent must no later than 2 working days after compliance with paragraph (1) provide to the Tribunal and the appellant a written statement which complies with any relevant practice direction, of whether the respondent opposes all or part of the appellant's case and if so the grounds for such opposition.
- (4) A practice direction may disapply the requirement in paragraph (1) in a specified category of case.

10 Suitability review

- (1) 16 working days after the Tribunal receives a notice of appeal the Tribunal must hold a review to decide whether justice can be done in relation to the appeal within the accelerated detained rules.
- (2) A party may provide submissions and evidence for consideration at that review at any time prior to two working days before the review.

12 Decisions and notice of decisions

- (1) Where the Tribunal makes a decision under rule 17 or decides an appeal, it must provide to each party-
- (a) a notice of the decision and the reasons for it; and
 - (b) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.
- (2) The Tribunal must provide the notice and the notification-

- (a) where it relates to a decision under rule 17, on the next working day after the day on which the decision was made;
- (b) where a final hearing was heard orally, not later than 3 working days after the day on which the hearing of the appeal was concluded; or
- (c) in any other case, not later than 3 working days after the day on which the appeal was decided.

Part 3

Appeals to the Upper Tribunal

13 Procedure for making an application for permission to appeal

- (1) An application for permission to appeal to the Upper Tribunal must be provided to the Tribunal so that it is received no later than 5 working days after the date on which the party making the application was provided with notice of the decision.
- (2) An application under paragraph (1) must-
 - (a) identify the decision of the tribunal to which it relates;
 - (b) identify the alleged errors of law in the decision; and
 - (c) state the result that the party making the application is seeking.
- (3) The Tribunal must consider whether to grant permission to appeal in relation to the decision mentioned in sub-paragraph (2)(a), or any part of that decision, and send a written notice to the appellant and the respondent no later than 5 working days after the date on which it received the application mentioned in paragraph (1).
- (4) The written notice mentioned in paragraph (3) must contain the reasons why permission is or is not granted.

Part 4

General provisions

14 Variation of timescales

- (1) Sub-paragraph (2)(a) of rule 4 of the Principal Rules has effect subject to the modification in paragraph (2).
- (2) The Tribunal may extend or shorten the time for complying with any rule, practice direction or direction within the timescales provided by the Accelerated Detained Rules if the Tribunal considers that such extension or shortening would secure that justice would be done.

15 Adjournment

- (1) Unless the Tribunal makes an order under rule 17(1), the Tribunal may not adjourn the final hearing.

16 Provision of material to the Tribunal

- (1) An appellant may provide a notice of appeal, an appellant's explanation of case or any document required as part of either, to the Tribunal either-
 - (a) by providing it to the Tribunal; or
 - (b) by providing it to the person having custody of the appellant.
- (2) Where a notice of appeal, explanation of case, or any document, is provided under paragraph (1)(b), the person having custody of the appellant must:

- (a) endorse on the notice, explanation or document that it is provided to the person having custody of the appellant; and
- (b) provide it to the Tribunal immediately.

Part 5

Transfer out of the Accelerated Detained Rules procedure

17 Transfer out

- (1) Where the Accelerated Detained Rules apply to an appeal or application, the Tribunal must order that the Accelerated Detained Rules cease to apply if the Tribunal determines that it is not possible for justice to be done in relation to the appeal within the Accelerated Detained Rules.
- (2) The Tribunal may make a determination under rule 17(1) at any time, on the application of one or more of the parties or on its own initiative.