

## Amendments to the Upper Tribunal Rules – NABA Implementation

### 1.— Citation, commencement, application and interpretation

(1) These Rules may be cited as the Tribunal Procedure (Upper Tribunal) Rules 2008 and come into force on 3rd November 2008.

(2) These Rules apply to proceedings before the Upper Tribunal except proceedings in the Lands Chamber.

(3) In these Rules—

***“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;***

***“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;***

***“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 provision set out in section 27(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 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 27(6) of the 2022 Act;***

***(ii) of a description prescribed by regulations made by the Secretary of State under section 27(1)(b)(i) of that Act;***

***(iii) which, when made, was certified by the Secretary of State under section 27 of that Act; and***

***(c) the First-tier Tribunal has not made an order under rule 15(1) of the Schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 in relation to the appeal.***

***“appellant” means—***

***(a) a person who makes an appeal, or applies for permission to appeal, to the Upper Tribunal;***

***(b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who started the proceedings in the First-tier Tribunal; or***

***(c) a person substituted as an appellant under rule 9(1) (substitution and addition of parties);***

***“applicant” means—***

***(a) a person who applies for permission to bring, or does bring, judicial review proceedings before the Upper Tribunal and, in judicial review proceedings transferred to the Upper Tribunal from a court, includes a person who was a claimant or petitioner in the proceedings immediately before they were transferred; or***

***(b) a person who refers a financial services case or a wholesale energy case to the Upper Tribunal;***

***“appropriate national authority” means, in relation to an appeal, the Secretary of State, the Scottish Ministers, the Department of the Environment in Northern Ireland or the Welsh Ministers, as the case may be;***

***“asylum case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 82, 83 or 83A of the Nationality, Immigration and Asylum Act 2002 in which a person claims that removal from, or a requirement to leave, the United Kingdom would***

breach the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

“authorised person” means—

- (a) an examiner appointed by the Secretary of State under section 66A of the Road Traffic Act 1988;
- (b) an examiner appointed by the Department of the Environment in Northern Ireland under Article 74 of the Road Traffic (Northern Ireland) Order 1995; or
- (c) any person authorised in writing by the Department of the Environment in Northern Ireland for the purposes of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010;

and includes a person acting under the direction of such an examiner or other authorised person, who has detained the vehicle to which an appeal relates;

“disability discrimination in schools case” means proceedings concerning discrimination in the education of a child or young person or related matters;

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Upper Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

***“expedited appeal” means an appeal to the Upper Tribunal under section 82A(3) of the 2002 Act;***

***“expedited related appeal” has the meaning provided by section 24(5) of the 2022 Act;***

“financial sanctions case” means an appeal to the Upper Tribunal under section 147(6) of the Policing and Crime Act 2017;

“financial services case” means a reference to the Upper Tribunal in respect of—

- (a) a decision of the Financial Conduct Authority;
- (aa) a decision of the Prudential Regulation Authority;
- (b) a decision of the Bank of England;
- (c) a decision of the Pensions Regulator;
- (d) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009; or
- (e) any determination, calculation or dispute which may be referred to the Upper Tribunal under the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010 (and in these Rules a decision in respect of which a reference has been made to the Upper Tribunal in a financial services case includes any such determination, calculation or, except for the purposes of rule 5(5), dispute relating to the making of payments under the Regulations).

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“immigration case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 40A of the British Nationality Act 1981, section 82 of the Nationality, Immigration and Asylum Act 2002, regulation 26 of the Immigration (European Economic Area)

Regulations 2006, regulation 36 of the Immigration (European Economic Area) Regulations 2016 or the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 that are not an asylum case;

“immigration judicial review proceedings” means judicial review proceedings which are designated as an immigration matter—

(a) in a direction made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 specifying a class of case for the purposes of section 18(6) of the 2007 Act; or

(b) in an order of the High Court in England and Wales made under section 31A(3) of the Senior Courts Act 1981, transferring to the Upper Tribunal an application of a kind described in section 31A(1) of that Act;

“interested party” means—

(a) a person who is directly affected by the outcome sought in judicial review proceedings, and has been named as an interested party under rule 28 or 29 (judicial review), or has been substituted or added as an interested party under rule 9 (addition, substitution and removal of parties);

(b) in judicial review proceedings transferred to the Upper Tribunal under section 25A(2) or (3) of the Judicature (Northern Ireland) Act 1978 or section 31A(2) or (3) of the Supreme Court Act 1981, a person who was an interested party in the proceedings immediately before they were transferred to the Upper Tribunal;

(c) in a financial services case or a wholesale energy case, any person other than the applicant who could have referred the case to the Upper Tribunal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties);

(d) in a financial sanctions case, any person other than the appellant upon whom the Treasury has imposed a monetary penalty under Part 8 of the Policing and Crime Act 2017 in connection with the same matters as led to the decision that is the subject of the appeal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties); and

(e) in a trade remedies case, any person other than the appellant who could have appealed to the Upper Tribunal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties);

“judicial review proceedings” means proceedings within the jurisdiction of the Upper Tribunal pursuant to section 15 or 21 of the 2007 Act, whether such proceedings are started in the Upper Tribunal or transferred to the Upper Tribunal;

“mental health case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984;

“national security certificate appeal” means an appeal under section 28 of the Data Protection Act 1998, sections 27, 79 or 111 of the Data Protection Act 2018 or section 60 of the Freedom of Information Act 2000 (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004);

“party” means a person who is an appellant, an applicant, a respondent or an interested party in proceedings before the Upper Tribunal, a person who has referred a question or matter to the Upper Tribunal or, if the proceedings have been concluded, a person who was an appellant, an applicant, a respondent or an interested party when the Upper Tribunal finally disposed of all issues in the proceedings ;

“permission” includes leave in cases arising under the law of Northern Ireland;

“practice direction” means a direction given under section 23 of the 2007 Act;

“QCS Board” means a Board constituted under Part 2 of the Transport Act 2000;

“quality contracts scheme” has the meaning provided for in section 124(3) (quality contracts scheme) of the Transport Act 2000;

“quality contracts scheme case” means proceedings in the Upper Tribunal under Part 2 of the Transport Act 2000;

“reference” , in a financial services case, includes an appeal;

“relevant minister” means the Minister or designated person responsible for the signing of the certificate to which a national security certificate appeal relates;

“respondent” means—

(a) in an appeal, or application for permission to appeal, against a decision of another tribunal, any person other than the appellant who—

(i) was a party before that other tribunal; or

(iii) otherwise has a right of appeal against the decision of the other tribunal and has given notice to the Upper Tribunal that they wish to be a party to the appeal;

(b) in any other any other application for permission to appeal, or any other appeal except a road transport case, the person who made the decision that has been challenged;

(c) in judicial review proceedings—

(i) in proceedings started in the Upper Tribunal, the person named by the applicant as the respondent;

(ii) in proceedings transferred to the Upper Tribunal under section 25A(2) or (3) of the Judicature (Northern Ireland) Act 1978 or section 31A(2) or (3) of the Supreme Court Act 1981, a person who was a defendant in the proceedings immediately before they were transferred;

(iii) in proceedings transferred to the Upper Tribunal under section 20(1) of the 2007 Act, a person to whom intimation of the petition was made before the proceedings were transferred, or to whom the Upper Tribunal has required intimation to be made.

(ca) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal;

(d) in a reference under the Forfeiture Act 1982 , the person whose eligibility for a benefit or advantage is in issue;

(da) in a financial services case—

(i) where the case is a multiple regulator case, both the primary and secondary regulator as defined in Schedule 3 to these rules (but subject to the operation of paragraph 4A(3) of that Schedule);

(ii) where the case is a single regulator case, the maker of the decision in respect of which a reference has been made;

(db) in a wholesale energy case, in relation to Great Britain, the Gas and Electricity Markets Authority or, in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation; or

(e) a person substituted or added as a respondent under rule 9 (substitution and addition of parties);

"road transport case" means an appeal against a decision of—

(a) a traffic commissioner, other than an appeal pursuant to—

(i) section 6F of the Transport Act 1985, or

(ii) section 123T of the Transport Act 2000, or

(b) the Department of the Environment in Northern Ireland;

“special educational needs case” means proceedings concerning the education of a child or young person who has or may have special educational needs, including proceedings relating to—

(a) an EHC needs assessment within the meaning of section 36(2) of the Children and Families Act 2014;

(aa) a detained person's EHC needs assessment within the meaning of section 70(5) of the Children and Families Act 2014; or

(b) an EHC plan within the meaning of section 37(2) of that Act,

of such a child or young person;

"TRA" means the Trade Remedies Authority;

"trade remedies case" means an appeal pursuant to the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 against a decision made by the TRA or a determination of the Secretary of State;

“tribunal” does not include a traffic commissioner;

“wholesale energy case” means a reference to the Upper Tribunal in respect of a decision of—

(a) in relation to Great Britain, the Gas and Electricity Markets Authority under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013; or

(b) in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“young person” means, in relation to a special educational needs case or a disability discrimination in schools case, a person over compulsory school age but under 25.

## **2.— Overriding objective and parties' obligation to co-operate with the Upper Tribunal**

(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Upper Tribunal effectively; *and*

(e) avoiding delay, so far as compatible with proper consideration of the issues; *and*

*(f) in the case of an expedited appeal or an expedited related appeal, bringing and determining an appeal more quickly than an appeal under section 82(1) of the 2002 Act would, in the normal course of events, be brought and determined by the First-tier Tribunal, so far as compatible with proper consideration of the issues.*

(3) The Upper Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Upper Tribunal to further the overriding objective; and

(b) co-operate with the Upper Tribunal generally.

## **5.— Case management powers**

(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

(a) *subject to rule 22D(3)*, extend or shorten the time for complying with any rule, practice direction or direction;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case;

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management issue;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—

- (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
  - (l) suspend the effect of its own decision pending an appeal or review of that decision;
  - (m) in an appeal, or an application for permission to appeal, against the decision of another tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal;
  - (n) require any person, body or other tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before that person, body or tribunal.
- (5) In a financial services case, the Upper Tribunal may direct that the effect of the decision in respect of which the reference has been made is to be suspended pending the determination of the reference, if it is satisfied that to do so would not prejudice—
- (a) the interests of any persons (whether consumers, investors or otherwise) intended to be protected by that notice;
  - (b) the smooth operation or integrity of any market intended to be protected by that notice; or
  - (c) the stability of the financial system of the United Kingdom.
- (5A) In a financial sanctions case, the Upper Tribunal may direct that the payment of a monetary penalty that is the subject of an appeal be suspended pending the determination of the appeal or its withdrawal.
- (6) Paragraph (5) does not apply in the case of a reference in respect of a decision of the Pensions Regulator.
- (7) In a wholesale energy case, the Upper Tribunal may direct that the effect of the decision in respect of which the reference has been made is to be suspended pending the determination of the reference.

## **21.— Application to the Upper Tribunal for permission to appeal**

- (1A) This rule does not apply to an application for permission to appeal to the Upper Tribunal if such application is made under rule 24 (response to notice of appeal).
- (2) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of another tribunal only if—
- (a) they have made an application for permission to appeal to the tribunal which made the decision challenged; and
  - (b) that application has been refused or has not been admitted [ or has been granted only on limited grounds.
- (3) An application for permission to appeal must be made in writing and received by the Upper Tribunal no later than—

(a) in the case of an application under section 4 of the Safeguarding Vulnerable Groups Act 2006 , 3 months after the date on which written notice of the decision being challenged was sent to the appellant;

(aa) in an asylum case or an immigration case *which is not an accelerated detained appeal* where the appellant is in the United Kingdom at the time that the application is made, 14 days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant; or

(ab) [...]

***(ac) in an accelerated detained appeal, 7 working days after the date on which notice of the First-tier Tribunal's refusal of permission was provided to the appellant;***

(b) otherwise, a month after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal, to the appellant.

(4) The application must state—

(a) the name and address of the appellant;

(b) the name and address of the representative (if any) of the appellant;

(c) an address where documents for the appellant may be sent or delivered;

(d) details (including the full reference) of the decision challenged;

(e) the grounds on which the appellant relies; and

(f) whether the appellant wants the application to be dealt with at a hearing.

(5) The appellant must provide with the application a copy of—

(a) any written record of the decision being challenged;

(b) any separate written statement of reasons for that decision; and

(c) if the application is for permission to appeal against a decision of another tribunal, the notice of refusal of permission to appeal, or notice of refusal to admit the application for permission to appeal, from that other tribunal.

(6) If the appellant provides the application to the Upper Tribunal later than the time required by paragraph (3) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—

(a) the application must include a request for an extension of time and the reason why the application 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 application.

***(6A) Rule 22D(3) applies in relation to an application to extend the time specified in paragraph (3)(ac).***

(7) If the appellant makes an application to the Upper Tribunal for permission to appeal against the decision of another tribunal, and that other tribunal refused to admit the appellant's application for permission to appeal because the application for permission or for a written statement of reasons was not made in time—



(a) the application to the Upper Tribunal for permission to appeal must include the reason why the application to the other tribunal for permission to appeal or for a written statement of reasons, as the case may be, was not made in time; and

(b) the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so.

(8) In this rule, a reference to notice of a refusal of permission to appeal is to be taken to include a reference to notice of a grant of permission to appeal on limited grounds.

## **22.— Decision in relation to permission to appeal**

(1) Except where rule 22A (special procedure for providing notice of a refusal of permission to appeal in an asylum case) applies, if the Upper Tribunal refuses permission to appeal or refuses to admit a late application for permission, it must send written notice of the refusal and of the reasons for the refusal to the appellant.

(2) If the Upper Tribunal gives permission to appeal—

(a) the Upper Tribunal must send written notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party;

(b) subject to any direction by the Upper Tribunal, the application for permission to appeal stands as the notice of appeal and the Upper Tribunal must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant; and

(c) the Upper Tribunal may, with the consent of the appellant and each respondent, determine the appeal without obtaining any further response.

***(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 in accelerated detained appeals) applies.***

(3) Paragraph (4) applies where the Upper Tribunal, without a hearing, determines an application for permission to appeal—

(a) against a decision of—

(i) the Tax Chamber of the First-tier Tribunal;

(ii) the Health, Education and Social Care Chamber of the First-tier Tribunal;

(iii) the General Regulatory Chamber of the First-tier Tribunal;

(iii) the Mental Health Review Tribunal for Wales; or

(iv) the Special Educational Needs Tribunal for Wales; or

(b) under section 4 of the Safeguarding Vulnerable Groups Act 2006.

(4) Subject to paragraph (4A), in the circumstances set out at paragraph (3) the appellant may apply for the decision to be reconsidered at a hearing if the Upper Tribunal—

(a) refuses permission to appeal or refuses to admit a late application for permission; or

(b) gives permission to appeal on limited grounds or subject to conditions.

(4A) Where the Upper Tribunal considers the whole or part of an application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the person seeking

permission may not request the decision or part of the decision (as the case may be) to be reconsidered at a hearing.

(5) An application under paragraph (4) must be made in writing and received by the Upper Tribunal within 14 days after the date on which the Upper Tribunal sent written notice of its decision regarding the application to the appellant.

**22A.— Special procedure for providing notice of a refusal of permission to appeal in an asylum case**

(1) This rule applies to a decision in an asylum case *which is not an accelerated detained appeal* to refuse permission to appeal or to refuse to admit a late application for permission to appeal, where—

(a) the appellant is not the Secretary of State; and

(b) at the time the application is made the appellant is in the United Kingdom.

(2) The Upper Tribunal must provide written notice of the refusal and of the reasons for the refusal (“the notice”) to the Secretary of State as soon as reasonably practicable.

(3) The Secretary of State must—

(a) send the notice to the appellant not later than 30 days after the Upper Tribunal provided it to the Secretary of State; and

(b) as soon as practicable after doing so, inform the Upper Tribunal of the date on which, and the means by which, it was sent.

(4) If the Secretary of State does not give the Upper Tribunal the information required by paragraph (3)(b) within 31 days after the notice was provided to the Secretary of State, the Upper Tribunal must send the notice to the appellant as soon as reasonably practicable.

**22B.— Special procedure for permission to appeal decisions in accelerated detained appeals**

(1) *Within 3 working days after the date on which the Upper Tribunal received the application for permission to appeal pursuant to rule 21(3)(ac) (application to the Upper Tribunal for permission to appeal) the Upper Tribunal must—*

*(a) decide whether to grant permission to appeal; and*

*(b) notify the appellant and the respondent of that decision and the reasons for it in writing.*

(2) *Rule 22D(3) applies in relation to the time specified in paragraph (1).*

**22C.—Effect of cessation of detention in an accelerated detained appeal**

(1) *If in 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 last day of the 7 working day period mentioned in rule 21(3)(ac) (application to the Upper Tribunal for permission to appeal);*

*the appellant ceases to be detained under a detention provision mentioned in section 27(7) of the 2022 Act, rule 21(3)(ac) ceases to apply and instead rule 21(3)(aa) or, as the case may be 21(3)(b), applies.*

(2) *If in an accelerated detained appeal at any time—*

*(a) after the last day of the 7 working day period mentioned in rule 21(3)(ac), and*

*(b) before the Upper Tribunal makes a decision under rule 22B(1)(a);*

*the appellant ceases to be detained under a detention provision mentioned in section 27(7) of the 2022 Act, rule 22B ceases to apply and instead rule 22 or, as the case may be, 22A applies.*

**22D.—Transfer out of the accelerated detained appeals procedure**

*(1) The Upper Tribunal may order that an appeal ceases to be an accelerated detained appeal if the Upper Tribunal is satisfied that to do so is the only way to secure that justice is done in relation to the appeal.*

*(2) The Upper Tribunal may make an order under paragraph (1) at any time, on the application of one or more of the parties or on its own initiative.*

*(3) Unless the Upper Tribunal makes an order under paragraph (1), the Upper Tribunal must not exercise its power under rule 5(3)(a) in such a way that the application for permission to appeal to the Upper Tribunal would be determined later than 20 working days after the date on which the applicant was given notice of the First-tier Tribunal's decision under rule 11 of the Schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.*

**26C Financial sanctions cases**

Schedule 4 makes provision for financial sanctions cases.

**26D Expedited appeals and expedited related appeals**

*Schedule 5 makes provision for expedited appeals and expedited related appeals.*

**40.— Decisions**

(1) The Upper Tribunal may give a decision orally at a hearing.

(1A) Subject to paragraph (1B), in immigration judicial review proceedings, a decision which disposes of proceedings shall be given at a hearing.

(1B) Paragraph (1A) does not affect the power of the Upper Tribunal to—

- (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
- (b) consent to withdrawal, pursuant to rule 17;
- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
- (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.

(2) Except where rule 22 (decision in relation to permission to appeal) or rule 22A (special procedure for providing notice of a refusal of permission to appeal in an asylum case)]<sup>3</sup> applies, the Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 7) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)—

- (a) a decision notice stating the Upper Tribunal's decision; and
- (b) notification of any rights of review or appeal against the decision and the time and manner in which such rights of review or appeal may be exercised.

(3) Subject to rule 14(11) (prevention of disclosure or publication of documents and information), the Upper Tribunal must provide written reasons for its decision with a decision notice provided under paragraph (2)(a) unless—

- (a) the decision was made with the consent of the parties; or
  - (b) the parties have consented to the Upper Tribunal not giving written reasons.
- (4) The Upper Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

***(4A) Where the decision of the Upper Tribunal disposes of proceedings to which section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 or section 22 of the 2022 Act applies the Upper 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 2022 Act applies and if so, how it has taken account of the provision of late material, in making its decision.***

(5) In a national security certificate appeal, when the Upper Tribunal provides a notice or reasons to the parties under this rule, it must also provide the notice or reasons to the relevant Minister and the Information Commissioner, if they are not parties.

*[The below is inserted after Schedule 4 (Procedure in financial sanctions cases)]*

## **SCHEDULE 5**

**Rule 26D**

### ***Procedure in expedited appeals and expedited related appeals***

#### ***1.—Interpretation***

***In this Schedule—***

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

***“related appeal” has the meaning provided by section 24(2) of the 2022 Act.***

#### ***2.—Notice of appeal***

***(1) A notice of appeal must be in writing and received by the Upper Tribunal not 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 brought by the appellant which is 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 brought by the appellant which is 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;*
  - (c) *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 specified in 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.*

### **3.—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 Upper Tribunal and the appellant with the following documents and information if not provided with the notice of appeal—*

- (a) *a copy of 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 after the date on which the respondent received the notice of appeal and any accompanying documents or information provided under paragraph 2.*

### **4.—Further steps**

*(1) If the appellant is represented, upon the respondent complying with paragraph 3, the appellant must provide the Upper Tribunal and the respondent 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, 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) not later than 28 days after receipt of the documents under paragraph 3 or, as the case may be, not later than 42 days after the notice of appeal was provided to the Upper Tribunal, whichever is the later.*

*(3) The respondent must not later than 14 days after the appellant complies with 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.*

#### **5.—Cases where an existing expedited appeal or expedited related appeal is referred to in the notice of appeal**

*(1) In cases where the notice of appeal 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 an expedited related appeal; and*

*(b) if so, provide the 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(1), 3(2) and 4(2) and (3) to be met for an expedited related 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.*

#### **6.—Transfer to First-tier Tribunal**

*(1) Where it is satisfied that 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 an order that any such appeal be continued as an appeal or appeals to the First-tier Tribunal and give any directions it considers appropriate.*

*(2) The Upper Tribunal may on its own motion or upon an application from a party make an order in accordance with sub-paragraph (1), setting out any appropriate directions.*

*(3) A copy of the order made under sub-paragraph (1) shall be sent by the Upper Tribunal to the First-tier Tribunal (Immigration and Asylum Chamber) and to the parties to the appeal.*