

## SCHEDULES

### SCHEDULE 2

Section 26

#### ASYLUM AND IMMIGRATION TRIBUNAL: CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION

##### PART 1

##### CONSEQUENTIAL AMENDMENTS

###### *Immigration Act 1971 (c. 77)*

- 1 (1) Schedule 2 to the Immigration Act 1971 (control on entry) shall be amended as follows.
  - (2) In the following provisions for “adjudicator” (or “an adjudicator” or “the adjudicator”) substitute “the Asylum and Immigration Tribunal”—
    - (a) paragraph 22(1A), (2) and (3),
    - (b) paragraph 23(1) and (2),
    - (c) paragraph 24(2), and
    - (d) paragraph 25.
  - (3) In paragraph 24(3) for “An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(a) above” substitute “Where a person is brought before the Asylum and Immigration Tribunal, a justice of the peace or the sheriff by virtue of sub-paragraph (2)(a), the Tribunal, justice of the peace or sheriff”.
  - (4) In paragraph 29—
    - (a) in sub-paragraph (2) for “an adjudicator or the Immigration Appeal Tribunal” substitute “the Asylum and Immigration Tribunal”,
    - (b) in sub-paragraph (3)—
      - (i) for “An adjudicator” substitute “The Asylum and Immigration Tribunal”,
      - (ii) for “that or any other adjudicator” substitute “the Tribunal”,
      - (iii) omit the words from “and where an adjudicator dismisses” to the end,
    - (c) omit sub-paragraph (4), and
    - (d) in sub-paragraph (6)—
      - (i) for “an adjudicator or the Tribunal” substitute “the Asylum and Immigration Tribunal”,
      - (ii) for “the adjudicator or Tribunal” substitute “the Tribunal”, and
      - (iii) for “the adjudicator or the Tribunal” substitute “the Tribunal”.
  - (5) In paragraphs 30, 31, 32 and 33—

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- (a) for “an adjudicator and the Tribunal” substitute “the Tribunal”,
- (b) for “an adjudicator or the Tribunal” substitute “the Tribunal”,
- (c) for “the adjudicator or the Tribunal, as the case may be” substitute “the Tribunal”,
- (d) for “the adjudicator or Tribunal” substitute “the Tribunal”,
- (e) for “the adjudicator or the Tribunal” substitute “the Tribunal”,
- (f) for “an adjudicator or Tribunal” substitute “the Tribunal”, and
- (g) for “before an adjudicator or before the Tribunal” substitute “before the Tribunal”.

(6) In paragraph 33—

- (a) in sub-paragraph (2)(a) for “before an adjudicator” substitute “before the Tribunal”,
- (b) in sub-paragraph (2)(b) for “before that adjudicator or before the Tribunal, as the case may be” substitute “before it”, and
- (c) in sub-paragraph (3) for “An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(a) above” substitute “Where a person is brought before the Asylum and Immigration Tribunal, a justice of the peace or the sheriff by virtue of sub-paragraph (2)(a), the Tribunal, justice of the peace or sheriff”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 2 (1) Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) shall be amended as follows.
- (2) In Part II for the entry relating to the Immigration Appeal Tribunal substitute—  
“*The Asylum and Immigration Tribunal.*”
- (3) In Part III omit the entry relating to immigration adjudicators.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 3 (1) Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) shall be amended as follows.
- (2) In Part II for the entry relating to the Immigration Appeal Tribunal substitute—  
“*The Asylum and Immigration Tribunal.*”
- (3) In Part III omit the entry relating to immigration adjudicators.

*British Nationality Act 1981 (c. 61)*

- 4 In section 40A of the British Nationality Act 1981 (deprivation of citizenship: appeal)
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- (a) in subsection (1) for “an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal)” substitute “the Asylum and Immigration Tribunal”,
  - (b) for subsections (3) to (5) substitute—

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- “(3) The following provisions of the [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#) shall apply in relation to an appeal under this section as they apply in relation to an appeal under section 82 or 83 of that Act—
- (a) section 87 (successful appeal: direction) (for which purpose a direction may, in particular, provide for an order under section 40 above to be treated as having had no effect),
  - (b) sections 103A to 103E (review and appeal),
  - (c) section 106 (rules), and
  - (d) section 107 (practice directions).”, and
- (c) omit subsections (6) to (8).

*Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))*

- 5 (1) For paragraph 6A of Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (proceedings for which legal aid may be given under Part II of that Order) substitute—
- “6A. Proceedings before the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission.”
- (2) The amendment made by sub-paragraph (1) is without prejudice to any power to amend or revoke the provision inserted by that sub-paragraph.

*Courts and Legal Services Act 1990 (c. 41)*

- 6 In Schedule 11 to the Courts and Legal Services Act 1990 (judges barred from legal practice) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute—
- “President or other member of the Asylum and Immigration Tribunal”.

*Tribunals and Inquiries Act 1992 (c. 53)*

- 7 (1) The Tribunals and Inquiries Act 1992 shall be amended as follows.
- (2) In section 7 (dismissal) omit subsection (3).
- (3) In Schedule 1 (tribunals under supervision of Council) for the entry for immigration appeals substitute—

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“Immigration and asylum

22. The Asylum and Immigration Tribunal constituted under section 81 of the Nationality, Immigration and Asylum Act 2002.”

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*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 8 (1) The Judicial Pensions and Retirement Act 1993 shall be amended as follows.

- (2) In Schedule 1 (qualifying judicial offices) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute (in the place occupied by the first of those entries)—

“President or other member of the Asylum and Immigration Tribunal”.

- (3) In Schedule 5 (retirement: relevant offices) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute—

“President or other member of the Asylum and Immigration Tribunal”.

*Asylum and Immigration Appeals Act 1993 (c. 23)*

- 9 Section 9A of the Asylum and Immigration Appeals Act 1993 (bail) shall cease to have effect.

*Special Immigration Appeals Commission Act 1997 (c. 68)*

- 10 The Special Immigration Appeals Commission Act 1997 shall be amended as follows.

- 11 At the end of section 2B (deprivation of citizenship) insert “(and section 40A(3)(a) shall have effect in relation to appeals under this section).”

- 12 (1) In Schedule 1 (constitution, &c.) for paragraph 5(b) substitute—

“(b) at least one is or has been a legally qualified member of the Asylum and Immigration Tribunal.”

- (2) A person is qualified for the purposes of paragraph 5(b) of that Schedule as it has effect after the commencement of sub-paragraph (1) above if he is qualified for the purposes of paragraph 5(b) as it had effect at any time since its commencement.

- 13 (1) Schedule 3 (bail) shall be amended as follows.

- (2) In paragraph 1(2) for ““adjudicator”” substitute ““Tribunal””.

- (3) In paragraph 1(3)(a) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””.

- (4) In paragraph 1(3)(b) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””.

- (5) In paragraph 1(4)(a) and (b) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””.

- (6) In paragraph 2(2)(a) for ““an adjudicator”” substitute ““the Asylum and Immigration Tribunal””.

- (7) In paragraph 2(2)(b) for ““the adjudicator”” substitute ““the Asylum and Immigration Tribunal””.

- (8) In paragraph 2(3)(a) for ““an adjudicator”” substitute ““the Asylum and Immigration Tribunal””.

- (9) In paragraph 2(3)(b) for ““the adjudicator”” substitute ““the Asylum and Immigration Tribunal””.

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- (10) In paragraph 6(2)(a) for “an adjudicator or the Tribunal” substitute “the Tribunal”.
- (11) In paragraph 6(2)(b) for “the adjudicator or the Tribunal, as the case may be,” substitute “the Tribunal”.
- (12) In paragraph 6(2)(c) for “the adjudicator or Tribunal” substitute “the Tribunal”.
- (13) In paragraph 6(3)(a) for “an adjudicator or the Tribunal” substitute “the Tribunal”.
- (14) In paragraph 6(3)(b) for “the adjudicator or Tribunal” substitute “the Tribunal”.
- (15) In paragraph 7(a) for “an adjudicator or the Tribunal” substitute “the Tribunal”.
- (16) In paragraph 7(b) for “the adjudicator or Tribunal” substitute “the Tribunal”.
- (17) In paragraph 7(c) for “the adjudicator or the Tribunal” substitute “the Tribunal”.

*Access to Justice Act 1999 (c. 22)*

- 14 For paragraph 2(1)(h) of Schedule 2 to the Access to Justice Act 1999 (Community Legal Service: excluded services) substitute—
  - “(h) the Asylum and Immigration Tribunal.”

*Immigration and Asylum Act 1999 (c. 33)*

- 15 In section 156(3) of the Immigration and Asylum Act 1999 (escorts and custody) for paragraphs (a) and (b) substitute—
  - “(a) the Asylum and Immigration Tribunal.”

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 16 The Nationality, Immigration and Asylum Act 2002 shall be amended as follows.
- 17 In section 72(10) (serious criminal) omit “adjudicator.”
- 18 (1) In the provisions listed in sub-paragraph (2)—
  - (a) for “an adjudicator” substitute “the Tribunal”,
  - (b) for “the adjudicator” substitute “the Tribunal”,
  - (c) for “he” in relation to an adjudicator substitute “it”,
  - (d) for “him” in relation to an adjudicator substitute “it”, and
  - (e) for “his” in relation to an adjudicator substitute “its”.
- (2) The provisions are—
  - (a) section 85 (matters to be considered),
  - (b) section 86 (determination of appeal), and
  - (c) section 87 (successful appeal: direction).
- 19 In section 87—
  - (a) for subsection (3) substitute—

“(3) But a direction under this section shall not have effect while—

- (a) an application under section 103A(1) (other than an application out of time with permission) could be made or is awaiting determination,
  - (b) reconsideration of an appeal has been ordered under section 103A(1) and has not been completed,
  - (c) an appeal has been remitted to the Tribunal and is awaiting determination,
  - (d) an application under section 103B or 103E for permission to appeal (other than an application out of time with permission) could be made or is awaiting determination,
  - (e) an appeal under section 103B or 103E is awaiting determination, or
  - (f) a reference under section 103C is awaiting determination.”, and
  - (b) in subsection (4) for “as part of the determination of the appeal for the purposes of section 101” substitute “as part of the Tribunal’s decision on the appeal for the purposes of section 103A”.
- 20 In section 104 (pending appeal)—
- (a) for subsection (2) substitute—
    - “(2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while —
    - (a) an application under section 103A(1) (other than an application out of time with permission) could be made or is awaiting determination,
    - (b) reconsideration of an appeal has been ordered under section 103A(1) and has not been completed,
    - (c) an appeal has been remitted to the Tribunal and is awaiting determination,
    - (d) an application under section 103B or 103E for permission to appeal (other than an application out of time with permission) could be made or is awaiting determination,
    - (e) an appeal under section 103B or 103E is awaiting determination, or
    - (f) a reference under section 103C is awaiting determination.”, and
    - (b) omit subsection (3) (remittal to adjudicator).
- 21 In section 106 (rules)—
- (a) in subsection (1)(a) for “, 83 or 101” substitute “or 83 or by virtue of section 109”,
  - (b) in subsection (1)(b) for “, 83, 101(1) or 103” substitute “or 83 or by virtue of section 109”,
  - (c) after subsection (1) insert—
    - “(1A) In making rules under subsection (1) the Lord Chancellor shall aim to ensure—
    - (a) that the rules are designed to ensure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and

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- (b) that the rules where appropriate confer on members of the Tribunal responsibility for ensuring that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible.”;
- (d) in subsection (2)(d) for “an adjudicator or the Immigration Appeal Tribunal” substitute “the Tribunal”;
- (e) in subsection (2)(e) and (f) omit “an adjudicator or”;
- (f) in subsection (2)(g) for “an adjudicator” substitute, in each place, “the Tribunal”;
- (g) in subsection (2)(h) for “an adjudicator” substitute, in each place, “the Tribunal”;
- (h) omit subsection (2)(j) and (k);
- (i) in subsection (2)(m) omit the words from “(which may” to the end;
- (j) in subsection (2)(o) omit “an adjudicator or”;
- (k) in subsection (2)(p) omit “an adjudicator or”;
- (l) in subsection (2)(q) omit “an adjudicator or”;
- (m) in subsection (2)(r) omit “an adjudicator or”;
- (n) in subsection (2)(s) omit “an adjudicator or”;
- (o) after subsection (2)(s) insert—
  - “(t) may make provision about the number of members exercising the Tribunal’s jurisdiction;
  - (u) may make provision about the allocation of proceedings among members of the Tribunal (which may include provision for transfer);
  - (v) may make provision about reconsideration of a decision pursuant to an order under section 103A(1) (which may, in particular, include provision about the action that may be taken on reconsideration and about the matters and evidence to which the Tribunal may have regard);
  - (w) shall provide that a party to an appeal is to be treated as having received notice of the Tribunal’s decision, unless the contrary is shown, at such time as may be specified in, or determined in accordance with, the rules;
  - (x) may make provision about proceedings under paragraph 30 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (transitional filter of applications for reconsideration from High Court to Tribunal) (and may, in particular, make provision of a kind that may be made by rules of court under section 103A(5)(b));
  - (y) may make provision about the form and content of decisions of the Tribunal.”;
- (p) in subsection (3)(a) omit “an adjudicator or”;
- (q) in subsection (3)(d) omit “an adjudicator or”;
- (r) in subsection (3)(e) omit “an adjudicator or”;
- (s) for subsection (3)(f) substitute—
  - “(f) may enable the Tribunal to certify that an appeal had no merit (and shall make provision for the consequences of the issue of a certificate).” and

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- (t) in subsection (4) omit “an adjudicator or”.
- 22 (1) In section 107 (practice directions)—
- (a) for “the Immigration Appeal Tribunal” substitute “the Tribunal”,
- (b) omit subsection (2), and
- (c) at the end add—
- “(3) A practice direction may, in particular, require the Tribunal to treat a specified decision of the Tribunal as authoritative in respect of a particular matter.”
- (2) The reference to a decision of the Tribunal in section 107(3) (as added by sub-paragraph (1) above) shall be treated as including a reference to a decision of the Immigration Appeal Tribunal.
- 23 In section 108 (forged document: proceedings in private)—
- (a) in subsection (1)(a) for “, 83 or 101” substitute “or 83”, and
- (b) in subsection (2) for “The adjudicator or the Immigration Appeal Tribunal” substitute “The Tribunal”.
- 24 (1) Section 112 (regulations, &c.) shall be amended as follows.
- (2) In subsection (2) after “Regulations and rules under this Part” insert “, other than regulations under section 103D(4),”.
- (3) For subsection (6) substitute—
- “(6) Regulations under section 103D(4)—
- (a) must be made by statutory instrument, and
- (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (7) An order under paragraph 4 of Schedule 4—
- (a) may include consequential or incidental provision (which may include provision amending, or providing for the construction of, a reference in an enactment, instrument or other document to a member of the Asylum and Immigration Tribunal),
- (b) must be made by statutory instrument, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

*Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10))*

- 25 (1) For paragraph 2(i) of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (civil legal services: excluded services) substitute—
- “(i) proceedings before the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission,”.
- (2) The amendment made by sub-paragraph (1) is without prejudice to any power to amend or revoke the provision inserted by that sub-paragraph.



## PART 2

### TRANSITIONAL PROVISION

- 26 In this Part “commencement” means the coming into force of section 26.
- 27 A person who immediately before commencement is, or is to be treated as, an adjudicator appointed under section 81 of the [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#) (appeals) (as it has effect before commencement) shall be treated as having been appointed as a member of the Asylum and Immigration Tribunal under paragraph 1 of Schedule 4 to that Act (as it has effect after commencement) immediately after commencement.
- 28 Where immediately before commencement a person is a member of the Immigration Appeal Tribunal—
- (a) he shall be treated as having been appointed as a member of the Asylum and Immigration Tribunal under paragraph 1 of Schedule 4 to that Act immediately after commencement, and
  - (b) if he was a legally qualified member of the Immigration Appeal Tribunal (within the meaning of Schedule 5 to that Act) he shall be treated as having been appointed as a legally qualified member of the Asylum and Immigration Tribunal.
- 29 A person who immediately before commencement is a member of staff of adjudicators appointed or treated as appointed under section 81 of the [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#) or of the Immigration Appeal Tribunal shall be treated as having been appointed as a member of the staff of the Asylum and Immigration Tribunal under paragraph 9 of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 immediately after commencement.
- 30 (1) This paragraph shall have effect in relation to applications under section 103A(1) or for permission under section 103A(4)(b) made—
- (a) during the period beginning with commencement and ending with such date as may be appointed by order of the Lord Chancellor, and
  - (b) during any such later period as may be appointed by order of the Lord Chancellor.
- (2) An application in relation to which this paragraph has effect shall be considered by a member of the Asylum and Immigration Tribunal (in accordance with arrangements under paragraph 8(1) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (inserted by Schedule 1 above)).
- (3) For the purposes of sub-paragraph (2)—
- (a) references in section 103A to the appropriate court shall be taken as references to the member of the Tribunal who is considering the application or who is to consider the application,
  - (b) rules of court made for the purpose of section 103A(4)(a) in relation to the court to which an application is made shall have effect in relation to the application despite the fact that it is considered outside the appropriate court, and
  - (c) section 103A(6) shall be subject to sub-paragraph (5) below.
- (4) Where a member of the Tribunal considers an application under section 103A(1) or 103A(4)(b) by virtue of this paragraph—

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- (a) he may make an order under section 103A(1) or grant permission under section 103A(4)(b), and
  - (b) if he does not propose to make an order or grant permission, he shall notify the appropriate court and the applicant.
- (5) Where notice is given under sub-paragraph (4)(b)—
- (a) the applicant may notify the appropriate court that he wishes the court to consider his application under section 103A(1) or 103A(4)(b),
  - (b) the notification must be given within the period of 5 days beginning with the date on which the applicant is treated, in accordance with rules under section 106 of the Nationality, Immigration and Asylum Act 2002, as receiving the notice under sub-paragraph (4)(b) above, and
  - (c) the appropriate court shall consider the application under section 103A(1) or 103A(4)(b) if—
    - (i) the applicant has given notice in accordance with paragraphs (a) and (b) above, or
    - (ii) the applicant has given notice under paragraph (a) above outside the period specified in paragraph (b) above, but the appropriate court concludes that the application should be considered on the grounds that the notice could not reasonably practicably have been given within that period.
- (6) Rules of court may specify days to be disregarded in applying sub-paragraph (5)(b).
- (7) A member of the Tribunal considering an application under section 103A(1) by virtue of this paragraph may not make a reference under section 103C.
- (8) An order under sub-paragraph (1)(a) or (b)—
- (a) shall be made by statutory instrument,
  - (b) shall not be made unless the Lord Chancellor has consulted such persons as he thinks appropriate, and
  - (c) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.