

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) (AMENDMENT) RULES 2010

2010 No. 747

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules make provision for financial services cases formerly dealt with by the Pensions Regulator Tribunal and the Financial Services and Markets Tribunal. The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22) transfers the functions of the Pensions Regulator Tribunal (with the exception of the functions of that Tribunal exercisable in relation to Northern Ireland) and the Financial Services and Markets Tribunal to the Upper Tribunal on 6 April 2010. The Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 transfers the functions of the Pensions Regulator Tribunal exercisable in relation to Northern Ireland on 6 April 2010.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The JCSI wrote to the Ministry of Justice on 27 January 2010 querying the absence of a time limit in paragraph 9 of Schedule 2 to the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) (the 2008 Rules) (as inserted by rule 14 of the Tribunal Procedure (Amendment) Rules 2010 (S.I. 2010/43)). In the memorandum the Ministry of Justice submitted to the JCSI on 2 February 2010 in response to this letter the Ministry acknowledged that this omission was made in error and that this would be corrected as soon as possible. Rule 10 of these Rules makes that correction.

4. Legislative Context

4.1 Part 1 of the Tribunals, Courts and Enforcement Act 2007 (the Act) creates a two tier tribunal system into which existing tribunals can be transferred or new appeal rights directed. Section 3 establishes the First-tier Tribunal and the Upper Tribunal. Section 7 provides for the Lord Chancellor with the concurrence of the Senior President of Tribunals, to make provision by order for the organisation of each tribunal into a number of Chambers. The jurisdictions of a range of tribunals have been transferred to the unified tribunal structure as part of an ongoing programme of reform.

5. Territorial Extent and Application

5.1 These Rules extend to the UK.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The need for reform of the tribunals system was set out in Sir Andrew Leggatt's Review 'Tribunals for Users – One System One Service' <http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm> which found that tribunals had grown in an almost entirely haphazard way and were not organised for the benefit of users.

7.2 The Act was enacted to implement Sir Andrew Leggatt's recommendation of a single tribunals system. It created two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The Upper Tribunal is primarily, but not exclusively, a tribunal for hearing appeals from the First-tier Tribunal. These Rules support the programme of transfers of tribunals, and is made as part of the Government's ongoing commitment to implement the provisions of the Act and provide a unified tribunal's structure designed to meet the needs of users.

7.3 These Rules make amendments to the 2008 Rules to make provision for cases transferred to the Upper Tribunal from the Financial Services and Markets Tribunal and the Pensions Regulator Tribunal on 6 April 2010. The rules insert a new Schedule 3 into the 2008 Rules to make provision for procedures that apply only to financial services cases. Amendments to make provision for financial services cases are also made to the main body of the rules, unless otherwise stated.

7.4 Rule 10 amends paragraph 9(b) of Schedule 2 of the 2008 Rules which makes provision for national security certificate appeals heard in the Upper Tribunal. This provision was inserted by the Tribunal Procedure (Amendment) Rules 2010 but omitted to provide a time limit for the Minister to respond to a direction of the Upper Tribunal. Rule 10 corrects this omission by making provision for a 14 day time limit.

- *Consolidation*

7.5 The Tribunal Procedure Committee will consider when to consolidate the 2008 Rules as part of its ongoing review and amendment of the rules. An informal consolidated text will be made available by 6 April 2010 at <http://www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>

8. Consultation outcome

8.1 The Tribunal Procedure Committee carried out two twelve week consultations on the rules required for the Upper Tribunal, both of which closed on 23 November 2009. Both consultations asked whether the existing rules for the Upper Tribunal should be amended to incorporate the jurisdictions; whether any specific additional were necessary or whether any of the existing 2008 Rules should not apply.

8.2 There were a total of five responses to the Financial Services and Markets Tribunal consultation, two of which provided the same response to the Pensions Regulator Tribunal consultation. A further respondent replied to this latter consultation. Respondents highlighted that unlike existing Upper Tribunal cases, financial services cases were not in their nature an appeal nor a form of judicial review and because of this some rules were not suitable for these jurisdictions without substantial amendment. Taking these views into account, the Tribunal Procedure Committee inserted Schedule 3 into the 2008 Rules to provide rules that apply only to financial services cases and made amendments to the main body of the rules to accommodate such cases.

9. Guidance

9.1 These Rules support the programme of transfers of tribunals into the unified tribunal's structure. Therefore, whilst separate guidance on these Rules is not planned, these Rules will be made available by 6 April 2010 at <http://www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>

10. Impact

10.1 The impact on business, charities or voluntary bodies is unlikely to lead to additional costs or savings.

10.2 The impact on the public sector is not likely to be affected.

10.3 An Impact Assessment has not been prepared for this instrument. A Regulatory Impact Assessment (RIA) was prepared for the Tribunals, Courts and Enforcement Act. This can be found at: <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm> (see pages 2 -14 for the tribunals element of the RIA)

That RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals bringing tribunals together in one organisation. No additional costs have been identified from the setting up of the First-tier Tribunal and Upper Tribunal in the first 3 years (see paragraph 1.63 of the RIA), and no further costs have been identified to change this assumption.

11. Regulating small business

11.1 The legislation applies to small business in so far as they may be appellants in proceedings before the Upper Tribunal.

11.2 The impact is unlikely to lead to additional costs or savings

12. Monitoring & review

12.1 The impact of these Rules will be monitored and reviewed as part of the annual report of the Tribunals Service, which measures performance against key indicators.

13. Contact

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