

**EXPLANATORY MEMORANDUM TO**  
**THE TRIBUNAL PROCEDURE (AMENDMENT NO.2) RULES 2018**  
**2018 No. 1053 (L. 10)**

**1. Introduction**

- 1.1 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 The Tribunal Procedure (Amendment No.2) Rules 2018 (“Amendment Rules”) make amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, the Tribunal Procedure (Upper Tribunal) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Part 1 of the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) created a two-tier tribunal system into which existing tribunals can be transferred, or new appeal rights directed. Section 3 of the 2007 Act establishes the First-tier Tribunal and the Upper Tribunal, which together make up this two-tier system. Both Tribunals are divided into Chambers which deal with different areas of jurisdiction e.g. health, immigration and asylum and education. In addition to statutory appeals, the Upper Tribunal also deals with certain kinds of judicial reviews.

- 6.2 The 2007 Act provides for tribunal procedure rules to be made by the Tribunal Procedure Committee, and deals with the process of making, and the content of, those rules.

## 7. Policy background

### *What is being done and why?*

#### *Amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008*

- 7.1 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 to correct a drafting error 23(2) of those Rules. The amendment clarifies that the time period for an appeal is calculated separately under sub-paragraphs (a) and (b), and the wording “no later than the latest of” should relate to sub-paragraph (a) only.

#### *Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008*

- 7.2 The Amendment Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to make amendments to those Rules that are consequential on change made by the Data Protection Act 2018 in respect of national security cases. The Amendment Rules also clarify the definition of “respondent” in those Rules to explain that in the case of an application for permission to appeal other than an appeal against a tribunal decision, the respondent is the person who has made the decision that has been challenged.

#### *Amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009*

- 7.3 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 to make consequential changes to add relevant cross-references to national security certificate provisions in the Data Protection Act 2018 for the tribunal to handle appeals from decisions by the Information Commissioners in relation to data matters for the public. The Amendment Rules also provide a time limit for applications under s166(2) Data Protection Act 2018 (Orders for complaints).

#### *Amendments to Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014*

- 7.4 The Amendment Rules makes an amendment to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 that is consequential on a change made by the Immigration Act 2016 in respect of applications for immigration bail from people being held by the Home Office on immigration matters. The amendment deletes an obsolete cross-reference to rule 41 (4) which is no longer in force.

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Informally consolidated versions of these rules will be updated onto the Justice website when the instruments come into force. They will be found at: [https://www.gov.uk/government/publications?departments\[\]=tribunal-procedure-committee](https://www.gov.uk/government/publications?departments[]=tribunal-procedure-committee)

## **10. Consultation outcome**

- 10.1 No public consultation was undertaken on these Rules. However, in accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the Tribunal Procedure Committee has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders. This includes the Tribunal Chamber Presidents, legal and policy officials in the Department for Digital, Culture, Media and Sport and Her Majesty's Courts and Tribunals Service.

## **11. Guidance**

- 11.1 Her Majesty's Courts and Tribunals Service produces guidance for all tribunal jurisdictions which is issued to parties at key stages of the appeals process and is available on the website at: <http://www.justice.gov.uk/tribunals>

## **12. Impact**

- 12.1 There is no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as its impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses, save to the extent that they may bring a relevant appeal. Any impact is expected to be minimal.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation to the impact of any changes to the tribunal procedure rules is monitored by the Tribunal Procedure Committee by way of feedback from the tribunal and users.

## **15. Contact**

- 15.1 Vijay Parkash at the Ministry of Justice Telephone: 0203 334 4471 or email: [Vijay.Parkash@justice.gov.uk](mailto:Vijay.Parkash@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Richard Mason at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.