

EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS)
(AMENDMENT) ORDER 2018

2018 No. 509

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 This Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655) (“the Chambers Order”). The Chambers Order organises the First-tier Tribunal and Upper Tribunal into Chambers.
- 2.2 This Order amends the Chambers Order so as to provide that appeals from decisions of the Property Chamber of the First-tier Tribunal relating to a reference by the Chief Land registrar or any other application, matter or appeal under the Land Registration Act 2002 are determined by the Lands Chamber of the Upper Tribunal rather than by the Tax and Chancery Chamber of the Upper Tribunal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 3 of the Tribunals, Courts, and Enforcement Act 2007 establishes the First-tier Tribunal and the Upper Tribunal.
- 4.2 Section 7 of the Act provides that the Lord Chancellor may, with the concurrence of the Senior President of Tribunals, organise the two Tribunals into Chambers and specify the allocation of functions within each Chamber.

This Order requires the concurrence of the Senior President of Tribunals. The provision for this is in section 7(9) of the Tribunals, Courts, and Enforcement Act 2007.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

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 At present, the majority of onward appeals from decisions made in the First-tier Tribunal Property Chamber go to the Upper Tribunal Lands Chamber, but there is an exception in respect of Land Registration appeals (these are cases in which someone is disputing either a registration of land made by HM Land Registry, or the removal of land from the Register). At the moment, these cases go to the Upper Tribunal Tax and Chancery Chamber.
- 7.2 Prior to the establishment of the Unified Tribunal System in September 2007, these cases were heard by the Adjudicator to HM Land Registry (“the Adjudicator”) and onward appeals from the Adjudicator went to the Chancery Division of the High Court. This onward appeal process, on entering the Unified Tribunals system, transferred into the new Upper Tribunal Tax and Chancery Chamber because it had judges who were suitably qualified to hear this type of case.
- 7.3 In 2010, the First-tier Tribunal Property Chamber was created, bringing into the Unified Tribunals System a number of tribunals, such as Residential Properties, which were non-departmental public bodies, with appeals going to the Upper Tribunal Lands Chamber. The changes in 2010 brought together various pieces of specialist land law in the Property Chamber, with onward appeal to the Lands Chamber, but did not change the route of appeal for Land Registration cases. This meant that land Registration cases were the only type of onward appeal from the First-tier Tribunal Property Chamber which are heard by an Upper Tribunal chamber other than the Upper Tribunal Lands Chamber.
- 7.4 This Order brings land registration cases in line with other types of property cases. The Department considers that moving Land Registration appeals from the Upper Tribunal Tax and Chancery Chamber to the Upper Tribunal Lands Chamber is desirable because it will make things simpler for litigants who will face a more straightforward and clearer process.

Consolidation

- 7.5 This Order does not consolidate existing legislation.

8. Consultation outcome

- 8.1 No public consultation has been undertaken in relation to the amendments made in the Order as no significant impact on the private, voluntary or public sectors is foreseen.
- 8.2 The Tribunal Procedure Committee consulted on a proposal in August 2017 to seek views on the Upper Tribunal (Lands Chamber) Rules that would be required were there to be a reallocation of the route of appeal to the Upper Tribunal (Lands Chamber) in land registration cases. Please see link:

<https://www.gov.uk/government/consultations/tribunal-procedure-upper-tribunal-lands-chamber-rules-2010-possible-changes>

- 8.3 Following the consultation, the Tribunal Procedure Committee agreed to amend the Upper Tribunal (Lands Chamber) Rules to cater for the award of costs in appeals in land registration cases, should the appellate route in those cases be allocated to the Lands Chamber, in response to the feedback. The Tribunal Procedure Committee published their response on 20 December 2017. Please see link:

<https://www.gov.uk/government/consultations/tribunal-procedure-upper-tribunal-lands-chamber-rules-2010-possible-changes#history>

9. Guidance

- 9.1 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>.

10. Impact

- 10.1 The instrument does not put regulatory burdens on business, charities or voluntary bodies.
- 10.2 There is no significant impact on the public sector.
- 10.3 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.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The Ministry of Justice will keep the Order under review.

13. Contact

- 13.1 Vijay Parkash at the Ministry of Justice Telephone: 0203 334 4471 or email: Vijay.Parkash@justice.gov.uk can answer any queries regarding the instrument.