

EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS)
(AMENDMENT) ORDER 2020

2020 No. 137

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 under the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) 2016 (S.I. 2016/1257) known as the 30 Hours Free Childcare Scheme, are heard in the Social Entitlement Chamber of the First-tier Tribunal as opposed to the Tax Chamber of the First-tier Tribunal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee of Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P 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 Section 3 of the Tribunals, Courts, and Enforcement Act 2007 (“the 2007 Act”) establishes the First-tier Tribunal and the Upper Tribunal.
- 6.2 Section 7 of the 2007 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 between the Chambers.

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

7. Policy background

What is being done and why?

7.1 This Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 to allow 30 Hours Free Childcare appeals to be heard in the Social Entitlement Chamber of the First-tier Tribunal.

7.2 Presently, 30 Hours Free Childcare appeals are heard in the Tax Chamber of the First-tier Tribunal. This is confusing for applicants as a similar scheme, Tax Free Childcare, is administered through the same digital platform and has its appeals heard in the Social Entitlement Chamber. This has led to confusion for applicants and is an inefficient use of financial and administrative resource as each 30 Hours Free Childcare case must now be transferred from the Tax Chamber to the Social Entitlement Chamber to ensure consistency.

30 Hours Free Childcare Scheme

7.3 This scheme which is administered by HM Revenues & Customs (HMRC) provides free of charge childcare for eligible parents for 30 hours a week for 38 weeks throughout the year. Parents who disagree with the decision may currently appeal to the Tax Chamber of the First-tier Tribunal.

Tax-Free Childcare Scheme

7.4 The Tax-Free Childcare Scheme replaced the Childcare Voucher Scheme in early 2017. It is administered by HMRC and supports eligible parents by covering £2 for every £8 they pay their childcare provider. If a parent disagrees with HMRC's decision they can appeal to the Social Entitlement Chamber.

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 No consolidation is taking place.

10. Consultation outcome

10.1 No public consultation has been undertaken in relation to amendments made by this order as no significant impact on the private, voluntary or public sector is foreseen.

10.2 In relation to appeals under the 30 Hour Free Childcare Scheme, the Department for Education consulted on the scheme between the 3rd of April 2016 to the 8th of June 2016. The link to the consultation can be found here:

<https://www.gov.uk/government/consultations/30-hour-free-childcare-entitlement>

10.3 In relation to appeals under the Tax-Free Childcare Scheme, HMRC consulted on the introduction of the scheme between the 5th of August 2013 to the 14th of October

2013. The link to the consultation can be found here:

<https://www.gov.uk/government/consultations/tax-free-childcare>

11. Guidance

11.1 This Order does not attract the need for guidance but general information about tribunals can be found on the Ministry of Justice website at:

<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>

12. Impact

12.1 There is no 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 because the 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.

14. Monitoring & review

14.1 The Ministry of Justice will keep the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 under review.

15. Contact

15.1 William Ferguson at the Ministry of Justice Telephone: 0787082284 or email: William.ferguson@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dominic Lake, Deputy Director for Administrative Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under-Secretary of State Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.