

**EXPLANATORY MEMORANDUM TO  
THE CHARITY TRIBUNAL RULES 2008**

**2008 No. 221**

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This statutory instrument puts into place the practice and procedures to be followed in relation to proceedings before the Charity Tribunal ('the Tribunal'). It is divided into six parts, dealing with introductory provisions, general matters before the Tribunal, initiating an appeal or application, provisions relating to the hearings, appeals from the Tribunal, and special provisions for references.
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Background**
  - 4.1 The Charities Bill received Royal Assent on 7 November 2006 to become the Charities Act 2006 (the "Act"). The Act establishes a new regime for the regulation of charities in England and Wales. Section 1A of the Charities Act 1993 ('the 1993 Act'), inserted by section 6 of the Act creates a new body corporate, the Charity Commission for England and Wales (the "Commission"). The Commission is a non-ministerial Government department.
  - 4.2 Section 8 of the Act inserts a new section 2A into the 1993 Act which establishes the Tribunal, and a new Schedule 1B which contains more detailed provision about the constitution and other similar matters of the Tribunal. The Act also inserts a new section 2B into the 1993 Act to allow the Lord Chancellor to make rules to regulate the exercise of rights to take proceedings and the practice and procedure of the Tribunal.
  - 4.3 Section 2A of the 1993 Act also provides that the Tribunal will have jurisdiction to hear matters brought to it under three different types of procedure: appeals, reviews, and references. The Tribunal will be able to hear appeals and reviews of certain decisions of the Commission, as set out in Schedule 1C to the 1993 Act. The Attorney General or the Commission (with the consent of the Attorney General) will be able to refer questions relating to charity law to the Tribunal in accordance with Schedule 1D to the 1993 Act.

- 4.4 During the passage of the Charities Bill through the House of Lords in 2004-05, the Government made a commitment that the Charity Tribunal Rules would be subject to public consultation and that those Lords who participated in the debate on the Rules would be invited to participate in that consultation (HL 23/02/05 col GC322). The Minister for the Third Sector (Phil Hope MP) wrote to the Lords who participated in that debate to inform them of the public consultation in September 2007.
- 4.5 The Government also committed to ensure that there is plain English guidance so that the practice and procedure of the Tribunal is readily accessible to those who want to understand it better. The Tribunals Service is developing that guidance, which will publicly be available on the Tribunal's website.

## **5. Extent**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As the Rules are subject to the negative resolution procedure, and do not amend primary legislation, no statement is required.

## **7. Policy Background**

- 7.1 A review of charities and other Not-for-Profit organisations was conducted by the Prime Minister's Strategy Unit which published its report, 'Private Action, Public Benefit', in September 2002. In July 2003 the Government published its response, 'Charities and Not-for-Profit: a Modern Legal Framework', in which it accepted most of the recommendations of the review. This included the creation of an independent Tribunal to hear appeals against the decisions of the Commission .
- 7.2 At the moment, if a charity wishes to challenge decisions of the Commission, its only recourse is to the High Court. The purpose of the Charity Tribunal will be to make it easier and cheaper for charities to challenge decisions of the Commission.
- 7.3 The Act includes a number of changes to charity law which affect the sector that the Commission regulates and as a consequence the way in which the Commission can regulate.
- 7.4 Any individual or organisation(s) directly affected by a decision of the Commission will have a right to make an appeal or an application for review to the Tribunal within 42 days.
- 7.5 The Tribunal will consider each case afresh, either on a point of law or fact and it may consider any evidence whether or not it was available at the time of the Commission's decision. The Tribunal will have a wide-ranging jurisdiction dealing with a number of matters arising from the Commission's decision.

7.6 The Tribunal will also hear matters that have been referred to it by the Attorney General or by the Commission after it has obtained the Attorney General's consent. In addition, the Attorney General will be able to intervene in any case before the Tribunal and also to appoint an advocate to the Court to argue any question in relation to the proceedings in the interests of the general public.

### Consultation

7.7 The Ministry of Justice is statutorily obliged to consult with the Administrative Justice and Tribunals Council (the "Council") on Procedural Rules. The necessary consultation has been carried out on the enclosed Charity Tribunal Rules 2008 ('the Rules'). In addition, a 12-week public consultation exercise ran between 15 August and 7 November 2007. A consultation document was distributed to a range of interested parties, including charities, lawyers and academics. Twenty-three responses were received. Where appropriate the Rules have been amended, further to the responses.

7.8 The specific concerns raised in the responses covered:

- rule 5, 'Powers of Tribunal to strike out';
- rule 15, 'Exceptions to disclosure';
- time scales with reference to rule 17, 'Appeal notice'; rule 22, 'Intervention by Attorney General in appeals and applications'; and rule 35 'Permission to appeal to the High Court';
- rule 17, 'Appeal notice';
- rule 38, 'Notice of reference'; and rule 42, 'Intervention by the Attorney General in references brought by the Commission'.

### *Rule 5*

7.9 The Attorney General's Office and the Commission requested that the Rules should allow the Tribunal to have authority to deal with vexatious litigants. It was suggested that because of the range of parties that can take proceedings before the Tribunal under the provisions of the Act, there is a risk that the Tribunal could be vulnerable to applications by vexatious litigants wishing to continue with their activities (whether as party or whether as "litigation friend"). To that end Rules 11 and 27 ensure that a person who is the subject of an order naming them as a vexatious litigant must request the permission of the Tribunal before they or their representative, as the case may be, can take proceedings before the Tribunal.

### *Rule 15*

7.10 It was requested that national security considerations should be one of the grounds on which a document should not be disclosed by the Tribunal (for

example, where a case involves allegations of terrorist financing by a charity) and that this should be provided for in the Rules.

- 7.11 Rule 15(3)(b) has been drafted to ensure a document should not be disclosed on the ground that ‘disclosure may be prejudicial to national security’.

*Rule 17(timescales)*

- 7.12 This rule specified ‘*that an appeal or application for review must be filed within 28 days of receipt of the Commission’s final decision (after the Commission’s Decision Review process)*’. Most of the consultees considered that “28 days” is too short to lodge an appeal, application or review. Following further reflection and being satisfied that it would not be detrimental to the overall processes of the Tribunal, “28 days” has been amended to “42 days.”

*Rules 22 and 35*

- 7.13 Rules 22 and 35 were amended to allow “28 days” instead of “14 days”. This amendment was as a result of the concerns which have been outlined in paragraph 7.12.

*Rule 17(3)(a)*

- 7.14 Six respondents mentioned that the Rules should make it possible for a potential appellant to identify clearly when the period for filing a written notice starts to run. For instance the rule 17(3)(a) did not provide that once the Commission has notified the person(s) the period should start from receipt of that notification.
- 7.15 Rule 17(3)(a) was amended to make clear that paragraph (a) only applies to the person forming the subject of the Commission’s decision and not to all those who are capable of being parties to an appeal. The rule also now states that the period for filing a written notice should start from receipt of notification of the Commission’s final decision.

*Rule 17(3)(b)*

- 7.16 Again, rule 17(3)(b) originally provided that the period for filing an appeal notice may start on the date stated on the Commission’s website as being the date of publication of the decision. The start of the period has been amended to be the date on which the statement about publication is actually posted on the website. Also rule 17(3)(b) now applies to all those who are capable of being parties to an appeal. Some respondents considered that as originally drafted this rule appeared to penalise a person who expected to get written receipt of the Commission’s decision by implying that they should check the Commission’s website for it. New rule 17 (3)(b), means there is no longer a requirement for it to be published in the web site.

### *Rules 38 and 42*

- 7.17 It was considered by the Attorney General's Office that the provisions made by the Rules in Part 6 should be simplified. To this end Part 6 now consists of Rules 38, 39 and 40.
- 7.18 Rule 42 was deleted as it duplicated rule 22. The Rules now refer to provisions for applying to references either in rule 22 or in Part 6.

### *General*

- 7.19 Other responses related to technical and drafting points aimed at ensuring that the Rules are streamlined in order to allow the Tribunal to have a clear framework governing its practices and procedures.

## **8. Impact**

- 8.1 The Office of the Third Sector developed a Regulatory Impact Assessment that considered the impacts, risk and benefits of the policy behind the Act and the Tribunal.
- 8.2 The Procedural Rules provide the framework within which the Charity Tribunal works and is administered. The Procedural Rules alone do not have any impact on business, charities or voluntary bodies and, therefore, an additional Impact Assessment was not prepared.
- 8.3 Section 73 of the Charities Act 2006 requires the appointment of a person to review the operation of the Act within five years of Royal Assent (by November 2011). This review will include an assessment of the impact of the Charity Tribunal.

## **9. Contact**

- 9.1 Jenny Patterson at the Ministry of Justice (telephone: 020 7340 6572; email [Jenny.Patterson@Tribunals.gsi.gov.uk](mailto:Jenny.Patterson@Tribunals.gsi.gov.uk)) can answer any queries about the instrument.