

**EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (GENERAL
REGULATORY CHAMBER) RULES 2009**

2009 No. 1976 L. 20

AND

THE TRIBUNAL PROCEDURE (AMENDMENT NO.2) RULES 2009

2009 No. 1975 L .19

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 instruments govern the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal in proceedings which have been allocated to the General Regulatory Chamber of the First-tier Tribunal, and the Tax and Chancery Chamber and Administrative Appeals Chamber of the Upper Tribunal by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008. These Rules come into force on 1 September 2009 and are subject to negative resolution.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 3 of the 2007 Act establishes the First-tier Tribunal and the Upper Tribunal. Section 30 of the Act allows for the Lord Chancellor to transfer functions of tribunals listed in Schedule 6 of the Act to either or both of these two Tribunals.
 - 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.
 - 4.3 Section 22(1) of the Act provides for Tribunal Procedure Rules to govern the practice and procedure to be followed by the First-tier Tribunal and the Upper Tribunal.
 - 4.4 Section 22(2) provides that those rules are made by the Tribunal Procedure Committee. Section 22(4) provides that the power to make rules must be exercised with a view to securing, among other requirements, that rules are simple and simply expressed.

- 4.5 So far as practicable, the rules for the different chambers of the First-tier Tribunal are in the same terms, especially as regards the general procedural powers of the tribunal to manage cases.
- 4.6 Schedule 5 to the Act makes provision for the Committee's membership. The Lord Chancellor, the Lord Chief Justice, the Senior President of Tribunals and the Lord President are given roles in relation to the appointment of members.
- 4.7 Paragraph 28 of Schedule 5 to the Act requires the Committee to consult before it makes rules and for rules made by the committee to be signed by a majority of its members. They are then submitted to the Lord Chancellor for him to allow them. Rules made and allowed are required to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c.36) applies as if the instrument contained rules made by a Minister of the Crown.
- 4.8 Paragraph 24(2) of Schedule 7 to the Act disapplies the requirement to consult with the Administrative Justice and Tribunals Council prior to making or approving rules where the rules were made by the Tribunal Procedure Committee. The Administrative Justice and Tribunals Council has a place on the Tribunal Procedure Committee.

5. Territorial Extent and Application

- 5.1 The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 apply to the United Kingdom. The Tribunal Procedure (Amendment) Rules 2009 apply to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The Tribunals, Courts and Enforcement Act 2007 creates two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The establishment of the Tribunals follows the Government's acceptance of the recommendations in Sir Andrew Leggatt's Review of Tribunals, *Tribunals for Users – One System, One Service*, published in August 2001. He recommended that tribunals should be brought together in a single system and that they should become separate from their current sponsoring departments.
- 7.2 The Government's response to Sir Andrew Leggatt's recommended single tribunal system was to enact the Tribunals, Courts and Enforcement Act 2007 which creates two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred.

- 7.3 Amendments to the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 made by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 3) Order 2009 establish the General Regulatory Chamber in the First-tier Tribunal; provide for the Finance and Tax Chamber in the Upper Tribunal to be re-named as the Tax and Chancery Chamber; allocate functions of Tribunal jurisdictions to the General Regulatory Chamber, and allocate additional functions to the Tax and Chancery Chamber and the Administrative Appeals Chamber in the Upper Tribunal.
- 7.4 From 1 September 2009 the Administrative Appeals Chamber of the Upper Tribunal will hear appeals from the First-tier Tribunal General Regulatory Chamber and appeals against decisions of Traffic Commissioners formerly dealt with by the Transport Tribunal. This is in addition to its existing functions. The Tax and Chancery Chamber will hear onward appeals against a decision of the First-tier Tribunal in proceedings in respect of a decision of the Charity Commission and may also hear some first instance appeals in respect of these decisions.
- 7.5 Jurisdictions will transfer into the Chamber in two phases. In September 2009, the jurisdictions of the current Charity Tribunal, Transport Tribunal, Consumer Credit Appeals Tribunal, and Estate Agents Appeals Panel will transfer, and, subject to Parliamentary approval, the jurisdictions of the current Information Tribunal, Gambling Appeals Tribunal, Claims Management Tribunal, Immigrations Services Tribunal, and Adjudication Panel for England, will transfer in January 2010. It is noted that some aspects of the Transport Tribunal jurisdiction are being transferred into the Upper Tribunal, and additionally the Tribunal will remain in place to deal with appeals under the Transport (Scotland) Act 2000.

8. Consultation Outcome

- 8.1 The Tribunal Procedure Committee carried out a twelve week consultation exercise on the proposed rules. The consultation included rules for both the September 2009 and January 2010 jurisdictions. The consultations ran till 8 May. 23 responses were received. 5 covered the Charity jurisdiction, 4 covered Transport, 3 covered Estate Agents Appeals, and 2 covered Consumer Credit. Of the remaining responses 2 were general responses, and the remainder related to jurisdictions transferring into the chamber in 2010.
- 8.2 In the consultation paper the Committee asked for views on draft rules for the General Regulatory Chamber and also asked respondents to consider whether they thought any amendments would also be needed to existing rules for the Upper Tribunal when these jurisdictions moved into the new structure.
- 8.3 It was noted that the intention behind the chamber rules was to create a single set of rules that can apply to all jurisdictions within the chamber. It was intended that the rules should be simple, flexible and easy to understand. The purpose of the rules was not to radically overhaul the existing processes, but to allow best current practices to be maintained.

- 8.4 The rules reflect the jurisdictions that will be transferring into the General Regulatory Chamber in September 2009. The Tribunal Procedure Committee stated in its consultation that it would not give final approval to rules for transferring jurisdictions until Parliament have approved the transfer. This means that there are no rules which relate expressly to the jurisdictions transferring in January. These will go into a separate instrument to be made later in the year subject to the relevant transfer orders being debated and approved by Parliament.
- 8.5 The main changes made for jurisdictions joining the Chamber in September 2009 are set out in the following paragraphs.
- 8.6 Rule 20 – Procedure for applying for a stay of a decision pending an appeal – has been added to allow for the continuation of current procedures where another enactment provides for the Tribunal to stay or suspend, or to lift a stay or suspension of, a decision which is or may be the subject of an appeal to the Tribunal. Similar provisions have been added at Rule 20A of the Upper Tribunal Rules. The rules make specific provisions for applying for stay of a decision to refuse an application for registration as a driving instructor, and for stay of a decision of a Traffic Commissioner. The need to preserve these powers and the time limits for making applications that were previously set out in primary legislation were recognised by the Tribunal Procedure Committee following responses to the consultation.
- 8.7 Rules 24 and 28 deal with appellants reply after a response to an appeal has been received. At the time of consultation it was intended that this provision would only be specifically included in respect of charities cases, and that the requirement to file a reply would be mandatory in this jurisdiction. Following further consideration, the Tribunal Procedure Committee decided that this should be an optional requirement, and that it should also extend to other jurisdictions. This has been achieved by the introduction of Rule 24, and amendments to Rule 28 and Rule 29 governing secondary disclosure in charities cases.
- 8.8 Rule 19, governing transfer of cases to the Upper Tribunal, has been amended in two ways as a result of responses to the consultation. This rule provides for the Tribunal to transfer charities cases to the Upper Tribunal. From January 2010 it is intended that the rule will also apply to appeals currently dealt with by the Information Tribunal. The amendments made following consultation remove the requirement for parties to consent to transfer of appeals as it was considered that parties may unreasonably withhold consent in some circumstances, and therefore whilst all parties should be given the opportunity to make representation on whether an appeal should transfer, it will be possible to transfer an appeal without consent.
- 8.9 The rule has been amended to clarify the process for transfer to the Upper Tribunal. The rule now provides for the Tribunal to refer cases to the President of the General Regulatory Chamber, who may, with the concurrence of the President of the appropriate Chamber of the Upper Tribunal, direct that the case be transferred to and determined by the Upper Tribunal.

- 8.10 The amended rule also provides for the tribunal to refer a preliminary issue to the Upper Tribunal. This was added following responses from within the charity jurisdiction, where it was noted that the development of the relatively new jurisdiction may be assisted by being able to refer to the Upper Tribunal for decisions on specific issues, whilst still making the substantive decision in the First-tier Tribunal.
- 8.11 The Tribunal Procedure (Amendment no.2) Rules 2009 also make amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, and Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.
- 8.12 Rules 3 of these rules clarify that the Social Entitlement Chamber may not extend the time for bringing certain types of appeal by more than 12 months, and rule 5 makes similar provisions in respect of the War Pensions and Armed Forces Compensation Chamber.
- 8.13 Rule 4 of these rules amends the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 to correct a time limit, so that the time for appealing decisions on housing benefit or council tax is always the same as it was for appealing to a Social Security Appeal Tribunal before the transfer of those appeals to the First-tier Tribunal in November 2008.
- 8.14 Rule 6 of these rules provide for time limits in proceedings under a new appeal right to the First-tier Tribunal established by the Education and Skills Act 2008.

9. Guidance

- 9.1 Tribunals Service produce guidance for all tribunal jurisdictions which are routinely issued to appellants at key stages of the appeals process and available on the Tribunals Service website. The guidance for all jurisdictions covered by these instrument is being updated to reflect changes to procedure as a result of these instrument and the transfer of the functions of these jurisdictions into the First-tier Tribunal and Upper Tribunal.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is unlikely to lead to additional costs or savings.
- 10.2 The public sector is not likely to be particularly affected.
- 10.3 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>
In terms of this order, the RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals bringing tribunals together in one organisation.

10.4 In assessing the costs and benefits of the legislation which is the subject of this SI, the RIA stated that the new system will have greater flexibility in adsorbing new work or responding to fluctuations, and would allow the introduction of a more coherent appellate system from tribunals. A further RIA for the Tribunal Procedure Rules has not been produced.

11. Regulating small business

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

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

12. Monitoring and Review

12.1 MoJ will keep General Regulatory Chamber and other chambers of the First-tier and Upper Tribunals under review and expect to assess data gathered after the first full year of operation of each chamber

13. Contact

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