

**EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2012**

2012 No. 500 (L.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) Rules 2012 make changes to the rules that apply in various Chambers of the First-tier Tribunal (the General Regulatory Chamber, the Health, Education and Social Care Chamber and the Social Entitlement Chamber), to the Upper Tribunal rules, and to the Upper Tribunal Lands Chamber rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 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 eg health, education and social care, or war pensions. The different chambers have their own sets of rules, based on a common core but with variations to fit their specialist business.

4.2 Section 22 of the 2007 Act provides for Tribunal Procedure Rules to be made, governing the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal. It also provides for the rules to be made by the Tribunal Procedure Committee (TPC).

4.3 Schedule 5 to the 2007 Act makes provision for the process of making the rules, and the content of those rules.

5. Territorial Extent and Application

5.1 This instrument extends to the UK.

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

These Rules make technical amendments to three of the sets of rules which apply in the First-tier Tribunal, and to the two sets of rules which apply in the Upper Tribunal. The reasons why these amendments are being made are, broadly: to take account of other

legislative changes; to increase the efficiency or flexibility of Tribunal procedure; to simplify the rules; and to rectify minor errors in the rules.

8. Consultation outcome

- 8.1 All rule amendments were made in consultation with the relevant judiciary and stakeholders in other government departments, and agreement was reached on final drafts of the amendments. In respect of three of the rule amendments the TPC undertook a public consultation on the proposals - rules 2(2) and 5(2), which were in the same consultation paper, and rule 3(3).
- 8.2 In respect of rule 3(3) of this SI, which introduces very limited circumstances in which mental health cases can be finally disposed of without a hearing, the public consultation showed some opposition to the original proposals; primarily there was concern as to whether there would be sufficient safeguards making sure that the patient had given informed consent and had the capacity to do so.
- 8.3 The TPC considered the responses to the consultation carefully and modified the proposals in certain respects. The rule amendments contain safeguards, such as that the Tribunal must be satisfied that the patient has capacity, and that the patient must consent in writing to not attending or being represented at a hearing (or their representative must do so on their behalf). The TPC also adopted a suggestion that the Tribunal should be able to dispose of cases without a hearing in these limited circumstances only where the patient is aged 18 or over. The TPC has written a full response to the consultation which is available at the web address below.
- 8.4 The proposal for the Tribunal to be able to strike out for lack of jurisdiction in mental health cases, which was also part of the same consultation exercise, showed a large majority of respondents in support and has been adopted as part of the rule amendments in this SI.
- 8.5 The consultation papers and responses written by the TPC are available at <http://www.justice.gov.uk/about/moj/advisory-groups/ts-committee-closed-consultations.htm>

9. Guidance

- 9.1 The Tribunals Service produces 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 is updated to reflect changes to procedure.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil.
- 10.2 The impact on the public sector is nil.
- 10.3 An impact assessment has not been prepared for these instruments. 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>

10.4 The RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals, bringing tribunals together in one organisation. No additional costs have been identified from the setting up of the First-tier Tribunal and Upper Tribunal in the first 3 years and no further costs have been identified to change this assumption.

11. Regulating small business

11.1 The legislation does not impact on small businesses.

12. Monitoring & review

12.1 MoJ will keep the tribunal rules continually under review.

13. Contact

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