

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (CORONAVIRUS) (AMENDMENT) RULES 2020
2020 No. 416 (L. 11)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes temporary amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (Health, Education, and Social Care Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. The amendments made by these rule changes will expire on the same day as section 55(b) of the Coronavirus Act 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The '21 day rule' requires that an SI subject to negative procedure should be laid at least 21 calendar days before it is due to come into force. However, this SI will come into force the day after it is laid. Breaching this rule is required due to the urgency of introducing these temporary measures to limit the spread of COVID-19.

Matters relevant to Standing Orders Nos. 83P and 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 Free text.
- 6.2 The 2007 Act provides for Tribunal Procedure Rules to be made by the Tribunal Procedure Committee, and deals with the process of making, and the content of, those rules.

7. Policy background

What is being done and why?

- 7.1 These rule changes are being made as part of emergency measures to mitigate against the impact of COVID-19 on the First-tier Tribunal and Upper Tribunal. Therefore, these are designed to be temporary and will be in place throughout the COVID-19 pandemic and will be subject to review by the Tribunal Procedure Committee.
- 7.2 Without these changes, staff, Tribunal users, and the Judiciary would be at serious risk of exposure to COVID-19. This legislation seeks to minimise that risk, reduce the operational pressures on staff and to ensure the continued running of the Tribunal Service and administration of justice.
- 7.3 Given the urgency part of these rule changes (section 2 cases and paper hearings) are being made by the Tribunal Procedure Committee in response to a direction by the Lord Chancellor as provided for under paragraph 29 of Schedule 5 of the Tribunal Courts and Enforcement Act 2007. The rule changes to private hearings have not been made under direction from the Lord Chancellor.

Mental Health, Section 2 cases

- 7.4 This SI amends rule 37 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. This amendment will extend the timeframe for hearing Section 2 cases under the Mental Health Act 1983 from 7 to 10 calendar days, with the option of extending the time limit further if 10 calendar days is still not practicable.
- 7.5 The pandemic has resulted in a reduction in staff leading to fewer people available to list Section 2 cases and making it increasingly difficult to list these cases within the statutory timeframe of 7 days. Therefore, this rule amendment will provide greater flexibility, extend the timeframe to list Section 2 cases and reduce further pressures on staff.

Paper based decisions

- 7.6 This SI inserts a rule into the Tribunal Procedure Rules for each Chamber in the First-tier Tribunal and Upper Tribunal except for the Tribunal Procedure (Upper Tribunal) (Lands Chamber Rules 2010). The rule allows Tribunals to make a decision on the papers without the parties’ consent. This is only in circumstances where a decision is urgent, and a hearing is not reasonably practicable. This amendment will reduce the risk of infection between Tribunal users, HMCTS staff and the Judiciary by allowing more decisions to be made on the papers.

Private Hearings

- 7.7 This SI provides the First-tier Tribunal and Upper Tribunal with a power to conduct remote hearings, either video or audio proceedings, in private if it is not practicable for that hearing to be broadcasted or accessed by a media representative. Those hearings which are conducted in private must be recorded, where it is practicable, in a manner directed by the Tribunal.
- 7.8 The Coronavirus Act 2020 makes provision for the public to observe hearings that proceed via remote technology. However, a gap arises as the Act does not cover situations where that technology to access remote hearings is not available in a Court or Tribunal building. With the limited audio and video link capabilities throughout the Tribunal service it would be impossible for all remote hearings to be accessed by the public through either video or audio. This is further exacerbated by the pandemic as buildings with the appropriate technology will be closed and staff needed to operate the technology are now working from home. Therefore, this SI will allow the First-tier Tribunal and Upper Tribunal to direct remote cases to be heard in private if they cannot be broadcasted and accessed by the public, to ensure the proper administration of justice.

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 A public consultation was not conducted by the Tribunal Procedure Committee due to the urgency of introducing this temporary measure to limit the spread of COVID-19.
- 10.2 The Tribunal Procedure Committee has consulted with the Presidents of each Chamber in the First-tier Tribunal and Upper Tribunal, the Senior President of Tribunals and the Lord President of the Court of Session in order to make these rules.

11. Guidance

- 11.1 Her Majesty's Courts and Tribunals Service produces guidance for each Tribunal jurisdiction 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>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 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.

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 impact of any changes to the Tribunal Procedure Rules is monitored by the Tribunal Procedure Committee by way of feedback from the Tribunal and users.

15. Contact

15.1 William Ferguson at the Ministry of Justice Telephone: 07870822284 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.