

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2022

2022 No. 312 (L. 5)

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 instrument makes amendments to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 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 e.g. health, immigration and asylum and education. In addition to statutory appeals, the Upper Tribunal also deals with certain kinds of judicial reviews.
- 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?

Amendments to Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

- 7.1 Amendments are made to clarify the process of lodging an appeal / response and the introduction of the skeleton argument stage prior to a hearing in respect of digital online reform changes to Immigration and Asylum Chamber's administrative processes.

Case Management Powers/Delegation to staff

- 7.2 Amendments are made to include provision for a case management appointment to be carried out by Tribunal staff authorised to carry out functions of a judicial nature and to clarify that the Tribunal may substitute the name of an appellant once proceedings are underway.

Sending, delivery and language of documents

- 7.3 Amendments are made to make express provision for the use of the Tribunal's online portal.

Providing contact details

- 7.4 A new rule has been inserted to clarify the procedure which requires appellants to provide the Tribunal with their contact details. It creates an express duty on the respondent to notify the Tribunal where an appellant is removed or deported, whilst Tribunal proceedings are underway. It also requires the respondent to obtain contact details for the appellant in the country to which they are removed or deported and to provide these details to the Tribunal.

Notice of Appeal

- 7.5 Amendments are made to simplify the information that must be provided when an appeal is initially lodged, and inserts a new paragraph to allow practice directions to require specified categories of case to set out full grounds of appeal.

Response: entry clearance cases

- 7.6 Amendments are made to require the respondent to provide the Tribunal with any document that has been provided by the appellant in support of their application. Inserting a new Rule to clarify the process for further steps to require represented appellants to submit an appeal skeleton argument and to make provision for dealing with the respondent's written statement in reply to that appeal skeleton argument.

Application for permission to appeal to the Upper Tribunal

- 7.7 Amendments have been made to make express the Tribunal's power to refuse to admit a late application for permission to appeal.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

Sending and delivery of documents

- 7.8 Amendments are made to clarify when documents are deemed to be received by the Tribunal in judicial review proceedings.

Decision in relation to permission to appeal

- 7.9 Amendments are made to confer a power on Upper Tribunal judges when refusing applications for permission to appeal, to certify the application as being “totally without merit”. The consequence of such certification is to remove the right for an applicant to seek to renew the application at an oral hearing.

Response to the notice of appeal

- 7.10 Amendments are made to widen the terms of the rule to conform more closely with Rule 52.13(2) of the Civil Procedure Rules 1998 (S.I. 1998/3132) and to accommodate applications for permission to appeal.

Amendment to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

Orders for costs

- 7.11 Amendments have been made to allow the Tribunal to make orders for costs in appeals brought under section 18 of the Land Compensation Act 1961.

8. European Union Withdrawal and Future Relationship

- 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 Informally consolidated versions of these rules will be updated onto the Justice website when the instruments come into force. They will be found at: [https://www.gov.uk/government/publications?departments\[\]=tribunal-procedure-committee](https://www.gov.uk/government/publications?departments[]=tribunal-procedure-committee).

10. Consultation outcome

- 10.1 Possible amendments to the Tribunal Procedure (Immigration and Asylum Chamber) Rules 2014 on potential changes to the Immigration and Asylum Rules in relation to Tribunal Reform was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period April to July 2021. There were two responses to the consultation. A copy of the reply of the Tribunal Procedure Committee consultation can be found here: <https://www.gov.uk/government/consultations/possible-changes-to-the-immigration-and-asylum-rules-in-relation-to-tribunal-reform>.
- 10.2 Possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 on potential changes to Rule 22 (Oral renewal hearings in the Upper Tribunal for permission to appeal in cases considered totally without merit) was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period June to August 2021. There were four responses to the consultation. A copy of the reply of the Tribunal Procedure Committee consultation can be found here: <https://www.gov.uk/government/consultations/possible-changes-to-rule-22-of-the-upper-tribunal-rules-2008>.
- 10.3 Possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 on potential changes to Rule 24 in relation to the provision, by a respondent, of a ‘response’ to a notice of appeal was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period May to July

2021. There were three responses to the consultation. A copy of the reply of the Tribunal Procedure Committee consultation can be found here:

<https://www.gov.uk/government/consultations/possible-changes-to-rule-24-of-the-tribunal-procedure-upper-tribunal-rules-2008>.

- 10.4 Possible amendments to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 on potential changes to Rule 10 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 in relation to the costs of ‘CAAD appeals’ was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period December 2021 to January 2022. There were two responses to the consultation. A copy of the reply of the Tribunal Procedure Committee consultation can be found here: <https://www.gov.uk/government/consultations/rule-10-of-the-tribunal-procedure-upper-tribunal-lands-chamber-rules-2010-in-relation-to-the-costs-of-caad-appeals>.
- 10.5 In accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the Tribunal Procedure Committee has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders. This includes the Lord President of the Court of Session, Tribunal Chamber Presidents, senior judiciary and Her Majesty’s Courts and Tribunals Service.

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 approach to monitoring of this legislation in respect to 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 Vijay Parkash at the Ministry of Justice Telephone: 0203 334 4471 or email: Vijay.Parkash@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

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