

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2023

2023 No. 327 (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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument (“the Amendment Rules”) makes changes to two sets of tribunal procedure rules that apply in the First-tier Tribunal to replace all references to “Her Majesty” with “His Majesty” following the death of Her Majesty Queen Elizabeth II and the accession of His Majesty King Charles III.
- 2.2 The Amendment Rules also makes changes to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 to allow appeals to be directly lodged with the First-tier Tribunal. Rule 4 of the Amendment Rules also amends the procedure for applying for directions and removes the power for a Tribunal member to undertake a medical examination.
- 2.3 The Amendment Rules also amend two sets of tribunal procedure rules that apply in the Upper Tribunal to allow the Upper Tribunal by practice directions, to make provision for the filing of documents to the Upper Tribunal’s secure online portal mandatory for specified tribunal users in any specified categories of case.
- 2.4 The Amendment Rules also amend the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 to correct a drafting error.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Ministry of Justice has taken action to correct a drafting error as identified by the Joint Committee on Statutory Instruments (Sixteenth Report of Session 2022-23) in respect of rule 6(2) of the Tribunal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/1030). A copy of the report can be found here:¹
- 3.2 The Ministry of Justice has consulted the SI Registrar as required by paragraph 4.7.6 of the Statutory Instrument Practice Guidance (5th edition) and confirms that the Amendment Rules will be issued under the free issue procedure.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.

¹ <https://committees.parliament.uk/publications/31578/documents/177298/default/>

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 (“TPC”), 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) (Social Entitlement Chamber) Rules 2008 and the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

7.1 The Amendment Rules amends the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 and the Tribunal Procedure (First-tier Tribunal) Rules 2009 to update references to “Her Majesty” to “His Majesty” following the death of Her Majesty Queen Elizabeth II and the accession of His Majesty King Charles III.

7.2 The TPC considered the effect of section 10 of the Interpretation Act 1978 and acknowledged that references in tribunal procedure rules to “Her Majesty” would fall to be read as references to “His Majesty”, but that would not effect textual amendments on the face of the tribunal procedure rules.

7.3 The TPC considers it appropriate to make express, textual amendments to the tribunal procedure rules, for ease of understanding by tribunal users. The TPC considers express textual amendments to be clearer and more preferable than reliance on tribunal users to understand the effect of section 10 of the Interpretation Act 1978.

Amendments to Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008

7.4 The War Pensions and Armed Forces Compensation Chamber (WPAFCC) of the First-tier Tribunal (FtT) is responsible for handling appeals by current and former servicemen or women in England and Wales against decisions by Veterans UK in relation to pensions, compensation, allowances etc. Like all administrative tribunals it is wholly independent of the decision-making body, Veterans UK. Presently the WPAFCC is the only chamber in the FtT which require appeals to be lodged with the Respondent organisation, in this case the Veterans UK, rather than directly with the Court or Tribunal.

- 7.5 However, the existing position where appeals against decisions taken by Veterans UK are made to them and then sent to the WPAFCC gives the appearance that the Chamber is not wholly independent and is contrary to principles of natural justice.
- 7.6 To remedy the issue of constitutional propriety and to uphold the independence of the Tribunal, the Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (“WPACC Rules”) to accommodate the introduction of ‘direct lodgement’ and changes the way that appeals to the WPAFCC are lodged, namely that ‘notices of appeal’ are lodged directly with the Tribunal, which is thereafter responsible for all case management.
- 7.7 The Amendment Rules also amends rule 6 of WPACC Rules in respect of the procedure for applying for directions, to make it clear that the person making a written application for a direction must send a copy of the application to the other parties to the proceedings.
- 7.8 In addition, the Amendment Rules also amend rule 24 of the WPACC Rules to remove the power for a Tribunal member to undertake a medical examination as the Tribunal no longer carries out medical examinations and does not have the facilities to do so.

Amendments to Tribunal Procedure (Upper Tribunal) Rules 2008 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

- 7.9 CE-Filing is an online system in use by His Majesty’s Courts and Tribunals Service staff as a case management system in the Upper Tribunal. It is also an e-filing system and can be made available for parties to proceedings to lodge or file documents (pleadings, correspondence, and evidence etc.) electronically at the Upper Tribunal. Similarly, the Upper Tribunal can make a document available to a party via CE-File. CE-File does not provide a mechanism whereby parties can serve documents directly on other parties. Presently permissive use of CE-filing is already enabled through the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.
- 7.10 The uptake by users for CE-Filing on a permissive basis has been relatively low although feedback received on the experience to date from tribunal users suggest that there are clear benefits of CE-filing. Data gathered by HMCTS has shown that the CE-Filing service improves the case management function undertaken by staff in relation to registering cases, scanning and uploading key documents for cases.
- 7.11 A positive impact of CE-File on the judiciary has been in their ability to operate the new case management side of the system directly without the delays involved in obtaining physical files or in waiting for staff to respond by e-mail to case queries or to provide electronic copies of documents.
- 7.12 A public consultation was undertaken following the making of a proposal for ‘mandation’ in relation to CE-filing to the TPC by a working group of administrative staff within HMCTS and the Upper Tribunal Chamber Presidents. The proposal is that detailed provisions as to mandatory CE-Filing would be a matter governed by Practice Directions, not expressly by detailed provisions of the Rules. Amendment of the Rules would enable the making of Practice Directions for such purpose. The TPC following the consultation concluded that there should not be any express mandation in a Rule other than a simple rule-change to facilitating it and that the ambit of mandation should be for Chamber Presidents to determine.

- 7.13 Following the TPC’s consideration of the responses to the public consultation, the Amendment Rules amend Rule 13 (sending a delivery of documents) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and Rule 13 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 to allow Practice Directions to set out requirements for mandatory CE-filing. Practice Directions for mandatory CE-filing may be issued by either the Senior President of Tribunals with the approval of the Lord Chancellor or by Chamber Presidents, with the approval of the Senior President of Tribunals and the Lord Chancellor.

Amendments to Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

- 7.14 The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 are amended to correct a drafting error in relation to Rule 39B (method of making application) as identified by the Joint Committee on Statutory Instruments (Sixteenth Report of Session 2022-23) in respect to the conservation covenant rules contained in the Tribunal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/1030). A copy of this statutory instrument can be found here: ²

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:³

10. Consultation outcome

Direct lodgement of War Pensions and Armed Forces Compensation scheme appeals

- 10.1 Possible amendments to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 to accommodate the introduction of Direct lodgement was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period 30 June 2022 to 22 September 2022 a copy of the consultation can be found here: ⁴ There were 8 responses to the consultation. The issues raised by the respondents and the TPC’s response to the consultation can be found here: ⁵

Mandatory CE-Filing in the Upper Tribunal

- 10.2 Possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 in connection with CE-Filing was the subject of a public consultation by the Tribunal Procedure

² <https://www.legislation.gov.uk/uksi/2022/1030/made>

³ <https://www.gov.uk/search/all?organisations%5B%5D=tribunal-procedure-committee>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086629/tpc-war-pensions-consultation-direct-lodgment.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086629/tpc-war-pensions-consultation-direct-lodgment.pdf

Committee. The consultation ran over the period 21 June 2022 to 16 August 2022 a copy of the consultation can be found here: ⁶. There were 2 responses to the consultation. The issues raised by the respondents and the TPC's response to the consultation can be found here: ⁷

- 10.3 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 Tribunal Chamber Presidents, senior judiciary, the Ministry of Defence and His Majesty's Courts and Tribunals Service.

11. Guidance

- 11.1 His 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: ⁸

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 and Cerys O'Keeffe at the Ministry of Justice Telephone: 07752399242 or email: Cerys.Okeeffe@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Courts, Tribunals and Transparency Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083894/tpc-ce-filing-consultation-june-2022.pdf

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124044/tpc-ce-file-consultation-response.pdf

⁸<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>

15.3 Parliamentary Under-Secretary of State Lord Christopher Bellamy KC MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.