

**EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS) ORDER 2010**

2010 No. 2655

THE TRIBUNAL PROCEDURE (AMENDMENT No. 3) RULES 2010

2010 No.2653 (L.16)

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 instruments**
 - 2.1 The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (“the Chambers Order”) assigns the functions relating to new appeal rights regarding MP expenses to the First-tier Tribunal (Tax) Chamber; it makes new provisions about allocating some matters to a particular Chamber of the Upper Tribunal, and it consolidates the original 2008 Chambers Orders and any subsequent amendments.
 - 2.2 The Tribunal Procedure (Amendment No. 3) Rules 2010 makes changes to some First-tier Tribunal and Upper Tribunal 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 new two-tier system.
 - 4.2 Section 7 of the 2007 Act provides for the Lord Chancellor, with the concurrence of the Senior President of Tribunals, to organise each of the two tribunals into a number of Chambers, and to make provision for the functions of the First-tier Tribunal and Upper Tribunal to be allocated between those Chambers.
 - 4.3 Schedule 5 to the 2007 Act provides for appointments to the Tribunal Procedure Committee, the body which makes rules for the First-tier Tribunal and Upper Tribunal. It also makes provisions for the process of making the rules, and the content of those rules.
5. **Territorial Extent and Application**

5.1 These Orders extend to the UK.

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

Chambers Order

7.1 This Order consolidates and replaces the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 and amending Orders. It brings together existing provisions organising the First-tier Tribunal and Upper Tribunal into chambers, enabling the Senior President of Tribunals to allocate a case to the most appropriate chamber in the event of doubt or dispute, and enabling a Chamber President to re-allocate a case to another chamber.

7.2 The Order also contains new provision for the allocation of tribunals' functions to the chambers. It allocates to the Tax Chamber of the First-tier Tribunal proceedings related to functions of the Compliance Officer for the Independent Parliamentary Standards Authority (concerned with MP expenses) and those related to the exercise by the Director of Border Revenue of functions under section 7 of the Borders, Citizenship and Revenue Act 2009. In the Upper Tribunal it allocates to the Administrative Appeals Chamber any proceedings or a preliminary issue transferred up under Tribunal Procedure Rules apart from those allocated to the Tax Chamber. It allocates certain judicial review applications which are within the jurisdiction of the Upper Tribunal to the Lands Chamber or to the Immigration and Asylum Chamber of the Upper Tribunal. Subject to specific exceptions for those new allocations, and for judicial review applications allocated to the Tax and Chancery Chamber, it remains the case that all other such applications are allocated to the Administrative Appeals Chamber. Under the Tribunals, Courts and Enforcement Act 2007 tribunal procedure rules may, as regards failures to comply with certain directions, provide for the First-tier Tribunal to refer the matter to the Upper Tribunal for exercise of its enforcement powers. The Order allocates such references to appropriate chambers of the Upper Tribunal. In certain minor respects the Order revises the existing wording concerning the allocation of functions.

Rules Amending Order

7.3 These Rules amend the Tribunal Procedure Rules applied by the First-tier Tribunal and the Upper Tribunal. The changes, apart from minor refinements to maintain the common style of the Rules, are as follows:

The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules

7.4 Rule 6 amends these rules to reflect the addition of MP expenses cases to that Chamber. They make a number of additions and amendments to definitions to reflect this. Amendments to rules relating to costs, time limits and the allocation of cases have also been amended to reflect the addition of this jurisdiction.

- 7.5 The amendment to rule 1(3) amends the definition of HMRC to reflect the functions of the recently established Director of Border Revenue.
- 7.6 The amendment to rule 28, which deals with the transfer of cases to the Upper Tribunal, provides that a preliminary issue may be transferred to the Upper Tribunal

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

- 7.7 Rule 2 amends these rules to include the circumstances in which the Gambling Commission may have to pay the costs of a successful appellant. Its intention is to allow for fees to continue to be payable in this jurisdiction and to provide for the option of ordering reimbursement of fees by the Gambling Commission where an appeal is successful. The Gambling Commission is content with the proposal – which restores the position that previously applied before the jurisdiction was transferred into the First-tier Tribunal.

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

- 7.8 Rule 3 amends the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699) to clarify the definition of “respondent” in the Primary Health Lists jurisdiction. The Rules now identify the appropriate respondents in applications made under the National Health Service Act 2006 (c.41) and regulations made under that Act.
- 7.9 Rule 3(6) makes minor amendments to the Schedule identifying time limits for certain proceedings in the Health, Education and Social Care Chamber. The Schedule is amended to refer to Paragraph 4 of Schedule 17 of the Equality Act 2010 in place of Section 28I of the Disability and Discrimination Act 1995 (DDA 1995). This is because the time limits for Disability Discrimination claims are now contained in the Equality Act 2010.

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

- 7.10 Rule 5 (4) makes minor amendments to the Schedule identifying time limits for certain proceedings in the Social Entitlement Chamber.

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

- 7.11 Rule 7 amends the rules governing lapse of cases in that Chamber.

The Tribunal Procedure (Upper Tribunal) Rules 2008

7.12 Rule 8 inserts a new rule 48 into rules allowing the Tribunal to treat certain post decision applications (to correct, set aside or review a decision and applications for permission to appeal) as interchangeable.

7.13 The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 consolidates the original 2008 Chambers Orders and all subsequent amendments.

8. Consultation outcome

Chambers Order

8.1 The consolidating of the Chambers Order was not the subject of public consultation, though the Senior President of Tribunals was consulted. The new inserted provisions were discussed by the relevant Chamber Presidents, as the Chambers Order defines how the work of the First-tier Tribunal and Upper Tribunal is allocated between Chambers. All resulting comments were assessed and a consensus agreement reached on the final content.

Rules Amending Order

8.2 The Tribunal Procedure Committee (TPC) carried out a six week consultation exercise on the proposed amendments to the draft rules relating to MP expenses appeals. The TPC were able to utilise the public consultation as an opportunity to seek stakeholders' views for proposals on minor changes affecting all cases in the Tax Chamber. The consultation ran from 28 June 2010 until 09 August 2010. Three responses were received. The respondents included Judges of the First-tier Tribunal and HMRC. After consideration the Committee agreed to some of the suggested additions and amendments and concluded some were best dealt considered by the Chamber President. The Committee will publish its response to the consultation in November 2010. It can be found at

<http://www.tribunalsservice.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>

8.3 All miscellaneous minor rule amendments were made in consultation with the relevant judiciary and with stakeholders in other government departments, and agreement was reached on final drafts of the amendments.

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 In terms of these orders, 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 Chambers structure and the tribunal rules continually under review.

13. Contact

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