

**EXPLANATORY MEMORANDUM TO**  
**THE TRIBUNAL PROCEDURE (AMENDMENT NO. 2) RULES 2012**

**2012 No. 1363 (L. 5)**

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 No. 2) Rules 2012 make changes to the rules that apply in the First-tier Tribunal (the Health, Education and Social Care Chamber) and the Upper Tribunal.

**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**

7.1 These Rules make technical amendments to one set of rules which apply in the First-tier Tribunal, and to one set of rules which apply in the Upper Tribunal. The reasons why these amendments are being made are, broadly, to respond to legislative changes.

7.2 Rules 2 and 3 come into force on 1 September 2012 when provisions of the Education Act 2011 come into force conferring jurisdiction on the First-tier Tribunal to hear disability discrimination claims relating to permanent exclusion of pupils from schools.

The rules amend the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, to reduce the time within which a respondent must provide its response in cases concerned with disability-related exclusion from schools. The Independent Appeal Panels (IAPs) that currently hear appeals against decisions not to reinstate children permanently excluded from maintained schools or pupil referral units will be replaced (in England only) by Independent Review Panels (IRPs). An IRP may not compel a school to reinstate an excluded pupil. It must refer such a case back to the school for reconsideration. In other cases, it may make a recommendation that a responsible body reconsider its decision, but it cannot insist on reinstatement. The First-tier Tribunal will be able to order reinstatement. The reduced timescale for responses in these cases to 15 working days will apply where a pupil has been permanently excluded and brings the timeframe closer in line with the arrangements made for cases in IRPs, and because it is clearly desirable that claims for reinstatement should be heard quickly (they will be heard within 35 days).

7.3 Rules 4 to 9 amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to reflect new provisions governing the licensing of operators of goods vehicles in Northern Ireland under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (“the GV Act”). The GV Act is an Act of the Northern Ireland Assembly which has conferred rights of appeal to the Upper Tribunal and which come into force on 1 July 2012. The following new rights of appeal are conferred on the Upper Tribunal:

- (i) rights to appeal in connection with operator’s licences will be conferred on applicants for, or holders of, such a licence, along with objectors and others as set out in section 35 of the GV Act;
- (ii) rights to apply for a direction under section 26(3) of the GV Act will be conferred on licence-holders and others following a decision of the Department refusing to stay directions or orders referred to in Section 26(2). The Upper Tribunal will be required under section 26(4) to give its decision on whether a stay should be granted within 14 days.
- (iii) the rules would also be appropriate for appeals against a determination of the Department of the Environment in Northern Ireland relating to the return or disposal of a vehicle, and against decisions disqualifying a person from acting as a transport manager, along with an associated right to apply for a direction delaying the date when the order takes effect. The proposed regulations conferring such appeal rights are the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) and the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland).

## **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.

8.2 In respect of rule amendments 2 and 3 the Department for Education consultation included a question relating to rules of procedure at the request of the TPC. It asked, on behalf of the TPC, whether the time limit for responses in these cases should be 15 working days. There was 69% support for this, however some respondents suggested that 15 days for responses would be too long, because reinstatement cases should be heard more quickly, and others suggested it would be too short, because disability discrimination cases can be complicated. A number of respondents also argued for the time limit to be expressed in terms of school days, rather than working days. The TPC

considered the responses to the consultation carefully and as a large majority of respondents were content with the proposal, and given the wide powers there are to extend or abridge time limits, agreed to the 15 working day time limit.

8.3 As regards the amendments 4 to 9 relating to road transport cases in Northern Ireland, the TPC undertook a full 3-month public consultation on the proposals. Seven responses were received; 3 of which had no comment to make. The remaining 4 made no material points to suggest changing the proposals, but included observations that invited clarification. The TPC considered the responses carefully and as they were providing observations as to the comparative benefits/disadvantages of the respective systems in Great Britain and Northern Ireland, made no further changes to the rules. The TPC has drafted a response to the consultation that includes all the responses.

8.4 The consultation paper and a full written response are available at <http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee/ts-committee-closed-consultations>

## **9. Guidance**

9.1 Her Majesty's Courts and Tribunals Service (HMCTS) produce guidance for all tribunal jurisdictions which are routinely issued to appellants at key stages of the appeals process and available on the HMCTS website. The guidance is updated as required 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**

Julie McCallen, Secretary to the Tribunal Procedure Committee, [julie.mccallen@hmcts.gsi.gov.uk](mailto:julie.mccallen@hmcts.gsi.gov.uk) can answer any queries.