

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT NO. 2) RULES 2013

No. 606 (L. 5)

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Tribunal Procedure (Amendment No.2) Rules 2013 (“the Rules”) makes changes to the Tribunal Procedure (Upper Tribunal) Rules 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The laying period for this instrument before coming into force will be 18 days rather than the normal minimum of 21 days. Suggested draft amendments were prepared by HM Treasury in early February. They offered to make such amendments under the consequential amendments powers conferred under the Financial Services Act 2012 to coincide with provisions of the Financial Services Act 2012 which come into force on 1 April 2013. However the Tribunal Procedure Committee (“TPC”) considers it preferable to make the necessary amendments to tribunal rules itself.

3.2 The TPC has consulted in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (noted at paragraph 8.1 below). Their consultation with the judiciary most closely concerned with hearing such cases concluded on 8th March 2013. The TPC considered meeting the normal 21 day laying period but as part of its consultation the Chamber President advised that doing so would cause potential difficulties. There are over 20 financial services cases currently being considered by the Upper Tribunal. To ensure that these cases can proceed without any delay, and that correct terminology is used (for example, there are no confusing references to regulators) it is important for the changes contained in the Rules to come into force on 1 April 2013.

3.3 The MoJ and the TPC apologise to the Joint Committee for the need to abridge the laying period, but concluded on this occasion that it was merited.

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, immigration and asylum and education. In addition to statutory appeals, the Upper Tribunal may also deal with certain kinds of judicial reviews.

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 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

• What is being done and why

7.1 The Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 which apply in financial services cases in the Upper Tribunal. They are consequential amendments required by changes made by the Financial Services Act 2012 to the Financial Services and Markets Act 2000.

7.2 Following commencement of the Financial Services Act on 1 April 2013, the regulatory responsibility in the financial services sector will be split between three regulators; the Bank of England, the Financial Conduct Authority and the Prudential Regulation Authority. The Rules refer to these new regulators, and replace references to the Financial Services Authority (which will from 1 April 2013 be known as the Financial Conduct Authority).

7.3 Some financial services firms will be regulated by two, possibly all three, of the regulators and there are certain categories of decision where the regulators would have to agree before a decision can be made or where one regulator can direct the other to take/not take a particular action. There is the possibility that the regulators will come to different conclusions because they will be looking at different aspects of that firm's regulation. The current rules work on the assumption that a single regulator makes the decision, and they do not properly enable the challenging of a decision made by two or more regulators. The Rules address this by allowing for multi-regulator cases.

7.4 The Rules also make some minor changes to terminology and grammar to reflect the multi-regulator approach.

• Consolidation

7.5 Consolidated versions of the Tribunal Procedure (Upper Tribunal) Rules 2008 will be updated onto the Justice website when this instrument comes into force. They will be found at: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/rules.htm>

8. Consultation outcome

8.1 The TPC has consulted with the relevant judiciary, including Chamber Presidents, in both the First-tier and Upper Tribunals, the President of the Court of Session, operational colleagues in Her Majesty's Courts and Tribunals Service (HMCTS) and with lawyers in HM Treasury.

9. Guidance

- 9.1 HMCTS produce guidance for all tribunal jurisdictions which are routinely issued to appellants at key stages of the appeals process and are available on the HMCTS website.
- 9.2 The guidance is updated as required to reflect changes to procedure.

10. Impact

- 10.1 The impact on business, charities, voluntary bodies and the public sector is nil.
- 10.2 An impact assessment has not been prepared for this instrument. A Regulatory Impact Assessment (RIA) was prepared for the 2007 Act. This can be found at: <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm>
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

- 13.1 Julie McCallen, the TPC Secretary, (julie.mcallen@justice.gsi.gov.uk) can answer any queries about this instrument.