

**EXPLANATORY MEMORANDUM TO**  
**THE TRIBUNAL PROCEDURE (AMENDMENT NO. 2) RULES 2014**  
**2014 No. 1505 (L. 25)**

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 2014 (“the Rules”) amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to require service of Upper Tribunal decisions refusing (or refusing to admit) applications by individuals for permission to appeal to the Upper Tribunal in asylum cases to be undertaken (in the first instance) by the Home Office instead of the Tribunal (see section 7).

**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 previously existing tribunals could be transferred and to which new appeal rights could be conferred. The First-tier Tribunal and the Upper Tribunal 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 also deals 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 Tribunal Procedure Committee (“TPC”). 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. The Rules extend 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 rule 40A of the Tribunal Procedure (Upper Tribunal) Rules 2008, which deals with the procedure for providing notice of a decision relating to an asylum case. The Rules also make a consequential amendment to rule 22.

- 7.2 The effect of this amendment is that where the Upper Tribunal has refused a person who appealed to the First-tier Tribunal permission to appeal to the Upper Tribunal, or refused to admit an application for this permission on the grounds of lateness, the Upper Tribunal will first serve the decision on the Secretary of State for the Home Department who must then serve the notice and other related information on the unsuccessful appellant (failing which the Upper Tribunal must do so).
- 7.3 The amendment extends existing rule 40A(1) which already provides for service by the Home Office of Upper Tribunal decisions in asylum appeals. It is intended to give advance notice to the Home Office in asylum cases where a person's application for permission to appeal has failed, and that person has therefore exhausted their appeal rights. This affords the Home Office the opportunity to make effective arrangements for enforcement of the decision upheld by the First-tier Tribunal.
- 7.4 This rule does not apply to decisions of the Upper Tribunal to grant permission to appeal, to refuse a Home Office application for permission to appeal, or to decisions made in fast track cases.

### ***Consolidation***

- 7.5 An informally consolidated version of the Tribunal Procedure (Upper Tribunal) Rules 2008 will be updated on the Justice website when this instrument comes into force. The rules can be found at: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/rules.htm>

## **8. Consultation outcome**

- 8.1 No public consultation was undertaken on these Rules; however the TPC had regard to the responses received (for example from the Bar Council and Immigration Law Practitioners' Association) to the consultation on the proposed rules for the Immigration and Asylum Chamber of the First-tier Tribunal. The TPC's consultation proposes that in the First-tier Tribunal all asylum decisions be served by the Tribunal rather than the Home Office, and it suggested that if this decision is taken the TPC will consider applying the same approach to the Upper Tribunal. Accordingly, the position will be revisited later in the year when the First-tier Tribunal rules are finalised and the Upper Tribunal rules might be amended further.
- 8.2 For these Rules, in accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the TPC has consulted and agreed the drafting with the President of the Immigration and Asylum Chamber of the Upper Tribunal, the Upper Tribunal Liaison Judge, Her Majesty's Courts and Tribunals Service (HMCTS), and the Home Office. The Home Office is aware, and accepts, that the Upper Tribunal rules might be amended later in the year.

## **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 at <http://www.justice.gov.uk/about/hmcts>. 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 since to change this assumption.

## **11. Regulating small business**

- 11.1 The legislation does not impact on small businesses.

## **12. Monitoring and review**

- 12.1 The TPC and MoJ will keep the tribunal rules continually under review.

## **13. Contact**

- 13.1 Julie McCallen, at the TPC Secretariat ([julie.mcallen@justice.gsi.gov.uk](mailto:julie.mcallen@justice.gsi.gov.uk)) can answer any queries about this instrument.