

**EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT NO. 3) RULES 2014
2014 No. 2128 (L. 30)**

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. 3) Rules 2014 (“Amendment No. 3 Rules”) make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 and to four sets of rules that apply in the First-tier Tribunal.

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

3.1 There are no matters of special interest to the Committee.

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 e.g. health, immigration and asylum and education. In addition to statutory appeals, the Upper Tribunal also deals with certain kinds of judicial reviews.

4.2 The 2007 Act also 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.

5. Territorial Extent and Application

5.1 The instruments extend to the United Kingdom.

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***

Amendments to the Upper Tribunal Rules

7.1 In October 2014 the TPC will introduce new rules of procedure in the First-tier Tribunal Immigration and Asylum Chamber. Amendments will be required to the Upper Tribunal hearing appeals from that Chamber as a consequence; including harmonisation of language and alterations to some time limits.

- 7.2 The TPC is also limiting the Upper Tribunal rule which provides that all decisions in asylum cases are served first on the Home Office. The new rule is that service of asylum decisions first on the Home Office will only occur when the Upper Tribunal has refused, or refused to admit, an application for permission to appeal to the Upper Tribunal. It is at this stage that the appellant has exhausted all appeal rights, and service via the Home Office facilitates the making of arrangements to enforce the Tribunal's decision.

Amendments to the General Regulatory Chamber Rules

- 7.3 These amendments anticipate the conferral of a new power, under the Immigration Act 2014, on the Immigration Services Commissioner to enable the Commissioner to apply to the Tribunal to temporarily suspend a person's registration as an immigration services provider. The general time limit for appealing has been disapplied for such applications.

Amendments to the Health, Education and Social Care Chamber Rules

The Special Educational Needs and Disability Regulations 2014

- 7.4 The Rules make amendments in both the First-tier and Upper Tribunal Rules consequential to Part 3 of the Children and Families Act 2014, which comes into force in September 2014. The Act makes provisions in respect of children and young people with special educational needs or disabilities. The amendments provide an appeal right for young persons over compulsory school leaving age and up to the age of 25 independently without their parents; and also reflect the provisions of Regulations which introduce mediation provisions before an appeal issues. The amendments also allow a child or young person to appoint a representative and bring disability discrimination claims against schools; attend a hearing; and give evidence and address the Tribunal.

The Education and Skills Act 2008

- 7.5 A new entry has been added into the rules Schedule in respect of a new appeal right contained in Section 129 of the Education and Skill Act 2008 against a decision to give, or not to vary or revoke, a direction prohibiting or restricting a person from taking part in the management of an independent educational institution. The Schedule lists those cases where the time limit for appealing is three months. The amendment is consequential to the Department for Education's (DfE) consultation on implementing Part 4 of the Education and Skill Act 2008.

Miscellaneous amendments

- 7.6 The TPC is taking the opportunity to improve the rules in this Chamber by removing some redundant references and obsolete time limits in the rules and the Schedule.

Amendment to the Social Entitlement Chamber Rules

- 7.7 The rules of the Social Entitlement Chamber and the related Upper Tribunal Rules are being amended from October 2014 to provide for confidentiality in social security and child support cases, if requested, in relation to former joint claimants of jobseeker's allowance and tax credits who are no longer living together; or any other case where two parties are former partners who might not wish their addresses, or their child's, to be known to each other. The amendments affect rule 19 in both sets of rules.

Amendment to the Property Chamber Rules

- 7.8 The definition of residential property cases has been amended to include cases under the Caravan Sites and Control of Development Act 1960 (the 1960 Act).

Jurisdiction over caravan site appeal rights was conferred on the Tribunal earlier this year. Certain provisions which have become obsolete have been omitted.

- **Consolidation**

7.9 Informally consolidated versions of the rules will be updated onto the Justice website when the instruments come into force. They will be found at: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/rules.htm>

8. Consultation outcome

8.1 Save for the amendments in relation to immigration and asylum cases heard in the Immigration and Asylum Chamber of the Upper Tribunal, no public consultation was undertaken on these Rules. However in accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the TPC has consulted individually with all relevant government departments and stakeholders. This includes the Chamber Presidents, legal and policy colleagues in the Home Office, DfE, Department for Health, Her Majesty's Revenue and Customs, the Department for Communities and Local Government, and Her Majesty's Courts and Tribunals Service (HMCTS).

8.2 The TPC ran a 12-week public consultation exercise on the proposed First-tier Tribunal IAC Rules during the spring of 2013; it closed on 2 July 2013. In it the TPC asked if there were any amendments that would be required to Upper Tribunal Rules relating to immigration and asylum appeals as a consequence. Stakeholders identified by MoJ, Her Majesty's Courts and Tribunals Service (HMCTS), and the Home Office were contacted in writing and informed of the consultation and 12 responses were received. None specifically related to the Upper Tribunal Rules, but there was a consensus to support any changes that would ensure consistency between both Tribunals.

8.3 Respondents to the DfE consultation supported a three-month time limit for starting appeals against a proposal for one month. TPC considered that three months was an appropriate time limit for appeals against decisions in relation to lists barring people from an activity. The changes are due to come into force from 1 September 2014.

9. Guidance

9.1 HMCTS produces guidance for all tribunal jurisdictions which is issued to parties at key stages of the appeals process and is available on the website at: <http://www.justice.gov.uk/tribunals>.

9.2. The guidance on the relevant sections of the Justice website will be updated in September 2014 to include information about any changes relating to the rule amendments.

9.3 These rule amendments have been made early in order to provide guidance in advance. The General Regulatory Chamber amendments will result in the OISC making operational changes to their current processes, forms and guidance. Early implementation allows sufficient time to do so.

10. Impact

- 10.1 The impact on business, charities, voluntary bodies and the public sector is nil.
- 10.2 An Impact Assessment (IA) has not been prepared for these instruments. A Regulatory IA was prepared for the 2007 Act and can be found at: <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm>
The Regulatory IA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals, bringing them together in one organisation. No additional costs were identified from the setting up of the First-tier Tribunal and Upper Tribunal within the first 3 years, and no further costs have been identified since to change this assumption.

11. Regulating small business

- 11.1 The Statutory Instrument does not impact upon small businesses.

12. Monitoring & review

- 12.1 The impact of any changes to the Tribunal Procedure Rules is constantly monitored by the TPC by way of feedback from tribunals and users.

13. Contact

- 13.1 Julie McCallen, at the Ministry of Justice, can answer any queries about this instrument. Tel: 020 3334 4066 or email: julie.mcallen@justice.gsi.gov.uk.