

**EXPLANATORY MEMORANDUM TO**  
**THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2019**

**2019 No. 925**

**1. Introduction**

- 1.1 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) Rules 2019 (“Amendment Rules”) make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 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.  
6.2 The 2007 Act provides for tribunal procedure rules to be made by the Tribunal Procedure Committee, and deals with the process of making, and the content of, those rules.

## 7. Policy background

### *What is being done and why?*

#### Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

- 7.1 The Amendment Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of three new Upper Tribunal jurisdictions. These jurisdictions arise in respect of (i) trade remedies cases; (ii) bus services cases; and (iii) cases involving certification of offences by the First-tier Tribunal in information rights cases.
- 7.2 As for trade remedies cases, these arise in connection with unfair trade practices, for example ‘dumping’ of goods or their subsidisation. The United Kingdom is a member of the World Trade Organisation, and membership requires certain legal recourse to be available in the event of disputes. As the United Kingdom is presently a member of the European Union, trade remedies cases fall to be dealt with by the European Commission and may be appealed to the European Court. In connection with an exit of the United Kingdom from the European Union, there will have to be alternative arrangements for trade remedies cases. The work undertaken by the European Commission is intended by the Government to be performed by a newly created body: the Trade Remedies Authority, with the Secretary of State having power to accept or reject its recommendations as regards outcomes following an investigation or review by the Trade Remedies Authority. The legal recourse (in the event of dispute) is intended to be to the Upper Tribunal. The Government intend that the Trade Remedies (Reconsideration and Appeals) Regulations 2019 will be made under the Taxation (Cross-border Trade) Act 2018. These regulations will cater for a process of ‘reconsideration’ by the Trade Remedies Authority of its decisions, and appeals to the Upper Tribunal against decisions of the Trade Remedies Authority or the Secretary of State.
- 7.3 In order to specify the procedure for these appeals, the Tribunal Procedure (Upper Tribunal) Rules 2008 have required necessary amendment. The Amendment Rules define a ‘trade remedies case’ for the purpose of the necessary amendments, and the definition in the Tribunal Procedure (Upper Tribunal) Rules 2008 of “interested parties” is amended to add a new definition in respect of a trade remedies case. This is to reflect the fact that a person other than an appellant will be capable of applying to be a party to the appeal, but such person must be one who could themselves have brought an appeal. Further, in trade remedies cases it is not unusual for persons providing documents and information to the investigating or reviewing authority to do so confidentially. As such, that engages how the Upper Tribunal itself might approach issues of confidentiality in these cases, as a matter of procedure. Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 deals with directions being given by the Upper Tribunal as to the use of documents and information, and is amended by the Amendment Rules to clarify the circumstances in which an appropriate direction might be made in these cases, so as to preserve confidentiality and also to provide that the Upper Tribunal is not precluded from considering such documents or information in making its decision. The Amendment Rules also make transitional modifications to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of trade remedies cases until the Trade Remedies Authority is established.

- 7.4 As for bus services cases, the Bus Services Act 2017 amended the Transport Act 1985 and the Transport Act 2000 to provide for certain appeals which may be made against a decision of a traffic commissioner. The definition of a ‘road transport case’ in the Tribunal Procedure (Upper Tribunal) Rules 2008 is such that these appeals, absent an amendment, would be dealt with by Schedule 1 to those Rules. However, these appeals should properly be dealt with by following the process set out in Rule 23 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the rules which follow. The Amendment Rules therefore amend the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of these appeals by revising the definition of “road transport case” and clarifying the process to be followed in connection with a notice of appeal in respect of these appeals.
- 7.5 As for cases involving certification of offences, the Data Protection Act 2018 and the Freedom of Information Act 2000 (as amended by the Data Provision Act) provide for the First-tier Tribunal to ‘certify an offence’ to the Upper Tribunal in circumstances in which certain acts or omissions under those Acts would constitute contempt of court if the proceedings had been before a court having power to commit for contempt. Rule 26A of the Tribunal Procedure (Upper Tribunal) Rules 2008 deals with cases referred by the First-tier Tribunal to the Upper Tribunal. For clarity, the Amendment Rules provide for an amendment to Rule 26A of the Tribunal Procedure (Upper Tribunal) Rules 2008 so that cases where an offence has been certified to the Upper Tribunal by the First-tier Tribunal expressly fall to be dealt with under Rule 26A.

*Amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009*

- 7.6 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 to make amendments to those Rules to make detailed provision for the certification of offences by the First-tier Tribunal to the Upper Tribunal in respect of certain acts or omissions under the Freedom of Information Act 2000 and the Data Protection Act 2018 which would constitute contempt of court if the proceedings had been before a court having power to commit for contempt. A specific new rule (Rule 7A) is created to cater for any application to certify an offence to the Upper Tribunal, bringing necessary clarity to the procedure. Further amendments are made to define a ‘certification case’, and to clarify the jurisdiction of the First-tier Tribunal in relation to these cases.

*Amendments to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010*

- 7.7 The Amendment Rules amend the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 to reflect changes made by the Infrastructure Act 2015; namely the register of local land charges being gradually transferred from being kept by a local authority to being kept by the Chief Land Registrar. This has relevance to applications to the Upper Tribunal made under section 2 of the Rights of Light Act 1959. Rule 41 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (method of application in these cases) is therefore amended by the Amendment Rules to reflect that the register may now be kept either by a local authority or by the Chief Land Registrar.

*Amendments to Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*

- 7.8 The Amendment Rules make an amendment to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in respect of new jurisdictions introduced by

the Tenant Fees Act 2019. The amendments introduce a new definition of “tenant fees case”, and clarify the procedure to be followed in those cases. The amendments also include, by amendment of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that costs may be recoverable in the event of a party acting unreasonably in bringing, defending or conducting these types of proceedings.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument relates to EU withdrawal in respect of rule changes to allow future trade remedies cases to be heard by the Tax and Chancery Chamber of the Upper Tribunal. These rule amendments are made under the provisions of the Tribunals, Courts and Enforcement Act 2007 and does not trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 The trade remedies appeal right to the Upper Tribunal in respect of decisions made by the Trade Remedies Authority (after reconsideration by the Authority itself) and the Secretary of State for International Trade is part of domestic legislation needed to operate the United Kingdom’s future independent trade policy after the exit of the United Kingdom from the European Union.

## **9. Consolidation**

9.1 Informally consolidated versions of these rules will be updated onto the Justice website when the instruments come into force. They will be found at:  
[https://www.gov.uk/government/publications?departments\[\]=tribunal-procedure-committee](https://www.gov.uk/government/publications?departments[]=tribunal-procedure-committee)

## **10. Consultation outcome**

10.1 Possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to enable the Upper Tribunal to deal with trade remedies cases (and hence concerned with those parts of the Amendment Rules dealing with such cases) was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran from the 19 October to 14 December 2018. There were two responses to the consultation. A copy of the Tribunal Procedure Committee consultation can be found here:

<https://www.gov.uk/search/all?organisations%5B%5D=tribunal-procedure-committee&order=updated-newest&parent=tribunal-procedure-committee>

10.2 In accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the Tribunal Procedure Committee has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders. This includes the Tribunal Chamber Presidents, senior judiciary, legal and policy officials in the Department for International Trade, the Department for Culture, Media and Sport, Her Majesty’s Land Registry, the Information Commissioner’s Office and Her Majesty’s Courts and Tribunals Service.

## **11. Guidance**

11.1 Her Majesty’s Courts and Tribunals Service 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>

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as its impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses, save to the extent that they may bring a relevant appeal. Any impact is expected to be minimal.

## **14. Monitoring & review**

- 14.1 The impact of any changes to the tribunal procedure rules is monitored by the Tribunal Procedure Committee by way of feedback from the tribunal and users.

## **15. Contact**

- 15.1 Vijay Parkash at the Ministry of Justice Telephone: 0203 334 4471 or email: [Vijay.Parkash@justice.gov.uk](mailto:Vijay.Parkash@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Richard Mason at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.