

EXPLANATORY MEMORANDUM TO
THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2020

2020 No. 651 (L. 14)

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 This instrument makes amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (Health, Education, and Social Care Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

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?

Access to Recordings

- 7.1 An amendment is made to each set of Rules set out above that inserts a temporary provision on access to recordings of remote hearings that was mistakenly omitted (due to a drafting error) from the Tribunal Procedure (Coronavirus) Amendment Rules 2020.
- 7.2 The amendment is intended to provide clarity for the practice and procedure governing the recordings of a remote hearing following a person obtaining the Tribunal's permission to obtain a copy of the recording in instances when the First-tier Tribunal and the Upper Tribunal directs a remote hearing to take place privately and it is not practicable for that hearing to be broadcasted to the public in a Court or Tribunal building. The amendment to each set of Rules will expire on the same day as section 55(b) of the Coronavirus Act 2020, ie., it will cease to have effect on 26 March 2022 unless further legislative action is taken to modify the expiry date of the law.

Exercise of judicial functions by staff

- 7.3 Amendments are made to the provisions on the exercise of judicial functions by staff in each set of Rules set out above to reflect the commencement of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.
- 7.4 These amendments do not widen the existing range of judicial functions that can be carried out by staff under judicial supervision.

Amendments to Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

- 7.5 The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 are amended in consequence of the Upper Tribunal decision in *JL v Cherry Lane [2019] UKUT 223 (AAC)*. That decision held that the provision which purported to extend the deadline for bringing a claim about disability discrimination in schools was ineffective. The amendment removes the ineffective part of the provision while preserving its effect in respect of special educational needs cases.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

- 7.6 The Tribunal Procedure (Upper Tribunal) Rules 2008 are amended to delete some wording which was made redundant by the quashing of the detained fast track rules and update some out-of-date statutory references.

Amendments to Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

7.7 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 are amended to delete some wording which was made redundant by the quashing of the detained fast track and to update some out of date statutory references.

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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 No public consultation was undertaken on these Rules. However, 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 Lord President of the Court of Session, Tribunal Chamber Presidents and Her Majesty's Courts and Tribunals Service.

11. Guidance

11.1 Her Majesty's Courts and Tribunals Service produces guidance for each Tribunal jurisdiction 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, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or 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.

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: 02033344471 or email: Vijay.Parkash@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kate Gregory-Smith, Deputy Director for Courts and Transparency Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under-Secretary of State Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.