

TRIBUNAL PROCEDURE COMMITTEE

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

Introduction

The response to the consultation paper ‘Transforming Tribunals: Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007’ was published on 19 May. The aim of Part 1 of the Tribunals, Courts and Enforcement Act 2007 is to replace the current random patchwork of tribunals with a more cohesive structure. The response confirms that the Government will proceed with the establishment of the First-tier Tribunal and the Upper Tribunal into which a large number of existing tribunal jurisdictions will transfer, and that the new tribunals will be established in November 2008. Both the First-tier and the Upper Tribunal will be organised into a number of chambers. Two chambers of the First-tier Tribunal and one chamber of the Upper Tribunal will be established in November 2008. Other chambers will follow later.

The Tribunal Procedure Committee has been established under the Act. Its function is to make and amend rules for tribunals, including the new tribunals. The initial task of the Committee is to create rules for the new tribunals to replace the existing rules of tribunals being abolished, but thereafter it will have a continuing role of review, amending rules where experience shows this to be desirable.

This is the second of three concurrent consultations on the proposed new procedure rules for the chambers being established on 3 November 2008 and covers the Health, Education and Social Care Chamber of the First-tier Tribunal. The other consultations cover the Social Entitlement Chamber of the First-tier Tribunal and the Administrative Appeals Chamber of the Upper Tribunal.

The transfer of tribunals into the First-tier Tribunal and Upper Tribunal will require Parliamentary approval. This consultation is on the assumption that the Government’s current proposals will be implemented. Of course no new rules will be made unless and until Parliamentary approval is given.

It is proposed that the following tribunals will be transferred to the Health, Education and Social Care Chamber of the First-tier Tribunal:

- Mental Health Review Tribunal (England);

- Special Educational Needs and Disability Tribunal (England); and
- Care Standards Tribunal.

In addition the Family Health Services Appeal Authority may join the Chamber but that will not be at least until April 2009.

Details of how to respond to this consultation are set out at the end of this paper.

Intention of chamber rules

The intention is to create a single set of rules that can apply to all jurisdictions within a particular chamber, replacing the existing diverse sets of tribunal rules. It is intended that the new rules should be simple, flexible and easy to understand. It is not intended radically to overhaul current processes; on the contrary, the rules draw heavily upon existing tried and tested processes and are designed to allow best current practices to be maintained. The rules are also designed to achieve the overriding objective which is to deal with cases fairly and justly, and in a consistent manner across all jurisdictions.

Inevitably, given the different jurisdictions, there is sometimes the need for jurisdiction specific provisions, but the aim is to keep these to the minimum. Some differences in practice will be set out in Practice Directions which will be jurisdiction specific.

Structure of Rules

The rules are divided into four parts, and one schedule as follows:

- Part 1: Introduction
- Part 2: General Powers and Provisions
- Part 3: Proceedings before the Tribunal
 - Chapter 1: Before the substantive hearing
 - Chapter 2: Hearings
 - Chapter 3: Decisions
- Part 4: Correcting, setting aside, reviewing and appealing Tribunal decisions

- Schedule: Time limits for providing notices of appeal and responses

Consultation questions

There are no specific questions in this consultation. We are keen to receive opinions on the rules as a whole as well as on any individual rules, bearing in mind the aim of achieving flexible and practical rules. We would, however, welcome comments on the following areas in particular:

Combined application for appeal or review

Onward appeals from all jurisdictions in this Chamber will be to the Upper Tribunal following commencement of these rules. In the case of appeals from the Mental Health Review Tribunal this will be a new appeal right, as there is at present no appeal on a point of law from a decision of the MHRT.

Rules 34 and 35 deal with the procedure for applying for permission to appeal or for the Tribunal to review its decision. We propose that applicant makes one single application which will be a combined application for review and/or permission to appeal. This will be in place of current provisions allowing a decision to be set aside when an application for permission to appeal is received. We believe that this will make the process easier to understand for users. It will be for the Tribunal to decide which, if any, application should be granted. Where a review is granted and succeeds, the outcome is necessarily quicker and cheaper than would be achieved following an appeal and possible remission for a further decision. It is envisaged that the process as set out in the rules would work in the following way;

- a party must make a single appeal/review application containing all relevant grounds asserting that why the decision is flawed;
- the Tribunal first decides whether to review the decision, and goes ahead with the review if it decides to do so;
- if the Tribunal makes any change on review, that is the end of the process, although the new decision can be the subject of a separate appeal and the time to apply for permission to appeal that decision would then start again;
- if the Tribunal does not consider a review appropriate, or does carry out a review but does not alter its decision on review, it must then consider whether to give permission to appeal; and

- where the Tribunal does not give permission to appeal, an applicant may then seek leave to appeal from the Upper Tribunal.

Whether significant rules are omitted.

Inevitably some existing provisions are omitted from the new rules (although some may be suitable for Practice Directions). Consultees may wish to comment on whether any particular omissions need to be reflected in the rules, either on a general or jurisdiction specific basis.

Jurisdiction Specific Rules

A number of rules apply, or do not apply, to specific jurisdictions. In all instances these rules reflect current practices in the particular jurisdictions. Views are sought on whether it is appropriate for these rules to continue to apply in these jurisdictions, and if so, whether they might profitably be adopted elsewhere.

Time limits

Rule 19 and the Schedule contain time limits for submitting a response which differ between type of proceedings. Should there be a common time limit for all proceedings, and if so, what should it be?

Responding to consultation

The consultation closes on Friday 11 July. Responses to the consultation should be sent to Michaela Strange at:

Tribunals Service
1st Floor
4 Abbey Orchard Street
London
SW1P 2BY

Or by e-mail to michaela.strange@justice.gsi.gov.uk

Issued by Mark Rowland on behalf of the Honourable Mr Justice Elias, Chair of Tribunal Procedure Committee