

TRIBUNAL PROCEDURE COMMITTEE

Upper Tribunal (Administrative Appeals 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 third of three concurrent consultations on the proposed new procedure rules for the chambers being established on 3 November 2008 and covers the Administrative Appeals Chamber of the Upper Tribunal. The other consultations cover the Social Entitlement Chamber and the Health, Education and Social Care Chamber of the First-tier 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 work of the Administrative Appeals Chamber of the Upper Tribunal will initially consist of the current jurisdictions of the Social Security Commissioners and Child Support Commissioners (with the addition of war pensions

assessment appeals from the First-tier Tribunal and the Pensions Appeal Tribunals in Scotland and Northern Ireland) together with onward appeals from the Health, Education and Social Care Chamber of the First-tier Tribunal, which will exercise jurisdictions currently exercised by:

- Mental Health Review Tribunal in England;
- Special Educational Needs and Disability Tribunal; and
- Care Standards Tribunal.

There will also be appeals from MHRT (Wales) and SENT (Wales). In addition this chamber of the Upper Tribunal will deal with appeals from the Independent Safeguarding Authority established under the Safeguarding Vulnerable Groups Act 2006, and may also deal with Judicial Review applications transferred from the High Court or Court of Session in accordance with provisions in Sections 15 to 21 of the Tribunals, Court and Enforcement Act.

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 **Upper Tribunal** rules are divided into 8 parts as follows:

- Part 1: Introduction

- Part 2: General Powers and Provisions
- Part 3: First instance proceedings in the Upper Tribunal
- Part 4: Appeals to the Upper Tribunal from other tribunals
- Part 5: “Judicial Review “ Proceedings in the Upper Tribunal
- Part 6: Hearings
- Part 7: Decisions
- Part 8: Correcting, setting aside and appealing Tribunal decisions

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:

First instance proceedings in the Upper Tribunal

Part 3 of the rules envisages that where first instance appeals are received by the Upper Tribunal, the tribunal should follow the procedure that would apply to appeals in that jurisdiction within the First-tier Tribunal. For example, in the case of appeals from the Independent Safeguarding Authority, it is intended that the tribunal will apply the relevant Health, Education and Social Care chamber rules.

Views are sought on whether this is the correct approach, or whether first instance appeals should be dealt with in the same way as appeals from other tribunals.

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.

Costs

Section 10 of the rules sets out the circumstances where the tribunal may make an order awarding costs following a final determination and the process for making such an order. Views are sought on whether this provision is appropriate for all proceedings within the Upper Tribunal.

Judicial Reviews

Part 5 of the rules sets out a simplified version of the judicial review procedure contained in the Civil Procedure Rules. Views are sought on whether this procedure is appropriate for handling JRs in the Upper Tribunal, including whether consideration should be given to alternative procedures if the tribunal is dealing with judicial reviews transferred from the Court of Session.

Review of decisions

Rule 43(3) sets out the grounds on which a party may apply to the Tribunal for a review of a final determination. These are if;

- (a) a legal argument which could have had a material effect on the outcome of the case was not raised in submissions to the Tribunal or by the Tribunal itself; or
- (b) (i) the final determination was in an armed forces case, proceedings arising out of a reference under section 4 of the Forfeiture Act 1982 or proceedings to which rule 21(2) applies; and
(ii) new evidence which could have a material effect on the outcome of the case has become available since the decision was made.

Views are sought on whether the power to apply for review should be limited as proposed.

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 QC.