

# **TRIBUNAL PROCEDURE COMMITTEE**

## **Upper Tribunal Rules for tax cases**

### **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 2007 Act is to replace the current random patchwork of tribunals with a more cohesive structure. The response confirmed 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. Two chambers of the First-tier Tribunal and one chamber of the Upper Tribunal are due to be established on 3 November 2008, subject to Parliamentary approval. Other chambers will follow later, with the Tax Chamber of the First-tier Tribunal and the Finance and Tax Chamber of the Upper Tribunal due to be established on 1 April 2009.

The Tribunal Procedure Committee has been established under the 2007 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.

### **Upper Tribunal Rules for tax**

This consultation is on rules for the Finance and Tax Chamber of the Upper Tribunal insofar as they might relate to tax cases. This is a companion consultation to that for rules of the Tax Chamber of the First-Tier Tribunal.

In May 2008, The Tribunal Procedure Committee consulted on proposed new procedure rules for the Administrative Appeals Chamber of the Upper

Tribunal. This will hear appeals on points of law from the Social Entitlement Chamber and the Health, Education and Social Care Chamber of the First-tier Tribunal and from certain other tribunals in Wales, Scotland and Northern Ireland. It will also hear some appeals on points of fact as well as law that are brought directly against the decisions of a public authority. These draft Upper Tribunal Rules 2008 have been published following that consultation, though these are still subject to final approval by the Tribunal Procedure Committee and by the Lord Chancellor.

The Finance and Tax Chamber of the Upper Tribunal will hear appeals on points of law from the Tax Chamber of the First-tier Tribunal. There will also be a very small number of tax appeals that are directly transferred from the First-tier Tribunal to the Upper Tribunal under rule **25** of the draft First-tier Tribunal (Tax Chamber) Rules 2009. These will mainly be important or complex cases where the finding of fact is subsidiary to points of law. (In addition, appeals currently heard by the Financial Services and Markets Appeal Tribunal and the Pension Regulator Tribunal will be heard within the Finance and Tax Chamber of the Upper Tribunal, though such cases are not within the scope of this consultation).

The draft Upper Tribunal Rules 2008 have been developed for the Administrative Appeals Chamber of the Upper Tribunal, and not for tax. The consultation asks the extent to which the draft rules should be modified or amended for tax. Are there rules needed for administrative appeals that are not appropriate for tax appeals and should not be applied? Conversely, are there rules missing from the draft rules that must be included for tax appeals?

For instance, are the broad case management powers conferred by rule **5** sufficient for all types of tax cases within the jurisdiction of the Finance and Tax Chamber? With this in mind, consultees might wish to consider the extent to which the rules governing the Tax Chamber of the First-tier Tribunal should apply to first-instance referrals. Should, for example, procedures like those governing complex matters in the Tax Chamber of the First-tier Tribunal apply to such cases in the Upper Tribunal? Would specific rules be required

to achieve that? Should the costs regime of the Tax Chamber of the First-tier Tribunal apply to such cases in the Upper Tribunal? If explicit provision for first-instance cases transferred from the First-tier Tribunal to the Upper Tribunal is required, we would welcome views on how such provision might be expressed.

The Finance and Tax Chamber of the Upper Tribunal will hear tax appeals from the first-tier that are frequently complex and involve large sums of money, and which are currently heard by the High Court. This may require a different approach from the approach of the rules for the Administrative Appeals Chamber in a number of areas. For instance, for tax cases in the Upper Tribunal, it may well be appropriate to have a presumption that costs would normally follow the event, which would require amendment to the costs power in Rule 10.

The Tribunal Procedure Committee would welcome consultees' views on what changes to the draft Upper Tribunal Rules 2008 should be made for tax appeals.

### **Responding to consultation**

The consultation closes on Wednesday 12 November 2008. Responses to the consultation should be sent to Charmaine Collyer at:

Tribunals Service

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12 Farringdon Road EC1 M 3BA

Or by e-mail to [Charmaine.collyer@tribunals.gsi.gov.uk](mailto:Charmaine.collyer@tribunals.gsi.gov.uk)

**Issued by Mark Rowland on behalf of the Honourable Mr Justice Elias**