

Consultation on the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

The purpose of this consultation is to seek views on whether the new set of draft Rules for the Lands Chamber of the Upper Tribunal will provide for the needs of cases before that Chamber. Responses to the consultation will be considered by the Tribunal Procedure Committee, which is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and Upper Tribunal.

Below you will find further information on the following:

- the First-tier Tribunal and Upper Tribunal
- the transfer of the Lands Tribunal into the Upper Tribunal and the types of cases it deals with
- the background to the draft Rules for the Lands Chamber
- the structure of the draft Rules
- the consultation questions
- how to respond and by when

The new draft Rules can be found at **Annex A** and the existing Rules used by the Lands Chamber can be found at **Annex B**. The consultation questions are also in a separate Word document, which can be used for submitting your response.

Further information on the Tribunals Service, the Tribunal Procedure Committee, and the Upper Tribunal (Lands Chamber) can be found on the Tribunals Service website <http://www.tribunalservice.gov.uk/index.htm>

The First-tier Tribunal and the Upper Tribunal

The Tribunals, Courts and Enforcement Act 2007 provides for the functions of a number of tribunals to be transferred to two tribunals established under that Act on 3 November 2008, the First-tier Tribunal and the Upper Tribunal. The First-tier Tribunal is the first instance tribunal for most jurisdictions. The Upper Tribunal mainly, but not exclusively, decides appeals from the First-tier Tribunal. It also has power to deal with judicial review work delegated from the High Court and Court of Session.

Each of the two new tribunals is divided into separate chambers which group together jurisdictions dealing with like subjects or requiring similar skills.

The Upper Tribunal's chambers are:

- the Administrative Appeals Chamber;
- the Tax and Chancery Chamber;
- the Lands Chamber;
- the Immigration and Asylum Chamber

The Lands Chamber of the Upper Tribunal

The Lands Chamber of the Upper Tribunal was created in June 2009 when the functions of the Lands Tribunal (England & Wales) were transferred to it.

The Lands Chamber has an appellate function hearing appeals from Valuation Tribunals, Leasehold Valuation Tribunals, and Residential Property Tribunals. In addition it determines disputed compensation claims in compulsory purchase and other types of land compensation cases, applications to discharge or modify restrictive covenants affecting land, contested blight notices, applications for rights of light certificates, and a range of other matters under various statutory provisions. It also acts as arbitrator in disputes referred to it by consent of the parties.

The Draft Rules

When the Lands Chamber was created the existing rules of the Lands Tribunal, modified where necessary, were kept in force and applied to it. This was a provisional measure, made to allow the jurisdiction to take early advantage of the flexibility of the new framework, but also made with the longer term aim of introducing a set of rules made by the Tribunal Procedure Committee (TPC).

The TPC makes rules of procedure for all jurisdictions within the First-tier Tribunal and the Upper Tribunal. It is currently chaired by Lord Justice Elias, the former President of the Employment Appeal Tribunal. From 26th April 2010, the role of Chair will be taken by Mr. Justice Paul Walker, the President of the Administrative Appeals Chamber of the Upper Tribunal. Members of the Committee are appointed by the Lord Chancellor, the Lord Chief Justice of England & Wales and the Lord President of the Court of Session. It also includes a member representing the views of the Administrative Justice and Tribunals Council.

It is intended that the rules should be simple and easy to follow and should not include provisions that contain unnecessary requirements, or repeat requirements contained elsewhere.

The approach of the TPC so far is to have a separate set of rules for each chamber of the First-tier Tribunal but to have a common set of rules, applying to all chambers, for the Upper Tribunal. The Tribunal Procedure (Upper Tribunal) Rules 2008 came into effect on 3 November 2008, and have been subsequently amended to meet the needs of each jurisdiction transferring to the Upper Tribunal. The Rules can be seen in their amended form at <http://www.tribunals.gov.uk/Tribunals/Rules/rules.htm>. However, in developing rules for the Lands Chamber, it was felt that the number of additional, specific provisions that would need to be incorporated might introduce a complexity that would inevitably make the rules less user-friendly. Given that one of the aims of the Rules is to make them simple and easy to follow, a separate set of draft rules for the Lands Chamber has been produced as the basis for this consultation.

The rules have, however, been drafted to correspond closely to the Tribunal Procedure (Upper Tribunal) Rules 2008 that apply in the other Upper Tribunal chambers, and to maintain consistency wherever possible. Also, they have been drafted so as to enable

existing procedures, which have been shown to have worked satisfactorily, to be retained.

The Rules are divided into twelve parts as follows:

Part 1: Introduction

This part sets out the overriding objective of the Rules and gives definitions for terms that appear throughout the Rules. The overriding objective reflects the requirements for tribunal procedure rules as set out in Section 22(4) of the TCE Act.

Part 2: General powers and provisions

This part of the Rules sets out general powers and provisions that may apply at all stages of tribunal proceedings.

Part 3: Applications for permission to appeal

This part covers applications for permission to appeal, and the decision in relation to permitting an appeal. This includes: the circumstances under which an appeal can be made; the time limits applying to that application, the way in which an application should be made; what the tribunal will do on receiving the application; how any respondents should make representations; and matters relating to the decision to permit an appeal, including refusing permission. New provision has been made for applications for permission to bring a cross-appeal.

Part 4: Appeals

This part covers the notice of appeal and time limits relating to it. New provision has been made for respondent's notices and for appellants to reply to such notices should they wish to do so.

Part 5: References

This part deals with any reference to the Tribunal other than an appeal or an application to which Part 3, 6, 7 or 11 applies, and any reference by consent under section 1(5) of the 1949 Act under which the Tribunal acts as arbitrator. This includes how references are made and any related time limits, and new provision has been made for a response to a reference.

Part 6: Applications under section 84 of the Law of Property Act 1925 (discharge or modification of restrictive covenants affecting land)

This part deals with the method of making applications under Section 84 of the Law of Property Act 1925; the publication of notices; notices of objection; it contains new provisions dealing with the established procedure for the admission of objectors and exchange of statements of case if required.

Part 7: Application under section 2 of the Rights of Light Act 1959

This part of the Rules covers procedures for making applications for certificates under the Rights of Light Act 1959, the notices to be given, and issuing of temporary certificates and definitive certificates.

Part 8: Judicial review proceedings

This part of the Rules covers procedure in the Upper Tribunal for dealing with judicial reviews transferred from the High Court.

Part 9: Hearings

This part applies to the listing of hearings, the requirement for hearings to be in public and hearing appeals in a party's absence.

Part 10: Decisions

This part applies to the making and issuing of decisions by the Upper Tribunal.

Part 11: Correcting, setting aside, reviewing and appealing decisions of the Tribunal

This part applies to the process for any subsequent applications that can be made to the Upper Tribunal.

Part 12: Revocations and transitional provision

This part lists any earlier Lands Tribunal instruments that are being revoked. It also covers a transitional provision.

Consultation Questions

The TPC would be interested in receiving your views on any aspects of these rules to which you would like to draw its attention, and would welcome views on the following questions in particular:

General Questions:

1. Do the draft rules require any particular additions? Please be specific about what addition is required and why it is needed.
2. Are there any of the rules as drafted that need amending? Please be specific about why the amendment is necessary.

Specific Questions:

3. Should the time limit in rule 6(6) 'Procedure for giving Directions' remain as drafted, i.e. running from the date when the document is sent?

Context: Rule 6(6), prescribes that the time limit for an objection to an application for a direction shall run from the date that the applicant sent the other parties a

copy of the application. This is different from existing rule 38 that currently applies to the Lands Chamber (see Annex B). The thinking behind the current language is that the parties will have advance notice of the application when the applicant seeks their prior consent to the application as required under Rule 6(6) and any delays caused by postal delays can be dealt with by an extension of time.

4. Should rule 10(5)(b) require consideration of an individual's financial means?

Context: This is consistent with rule 10(7)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 but would be a change from existing practice. A more general review of costs in tribunals is in progress, following Lord Justice Jackson's review of costs in the courts and one approach would be to await the outcome of that review before making any change.

5. Rule 20(3)(f) and (9)(d) allows for parties to request an oral hearing. Is such provision required or desirable?

6. In rule 24 should time run from when the respondent's notice was 'received' by the appellant, which would usually be the same as the date on which the respondent's notice was received by the Tribunal?

Context: In rule 24, time runs from the date when the respondent 'sent' the respondent's notice. This is consistent with the approach taken elsewhere in the Upper Tribunal Rules. However, elsewhere in the Rules it will always be the Tribunal that will have sent the relevant document – except in rule 6 where special considerations may apply for reasons suggested in question 3 above – and the Tribunal may be expected to have a clear record of when a document is sent reducing disputes about dates of service.

7. Rules 31 and 32 will allow any application to be determined without a hearing when the parties agree that none is required. Is this change required or desirable?

Context: Under the current Lands Chamber rules and procedures all applications to which there are objections are currently dealt with at a hearing and it is only if there are no objections that the applicant may request a decision without a hearing. However, there have been some cases with objectors where the parties have requested the written representation procedure.

8. Are rules 35 and 36 necessary or desirable given the general case-management powers in rule 5 and, in particular, the power to stay proceedings under rule 5(3)(j)?

9. Is rule 43 sufficient, or should a basic procedure, based on either Part 4 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (amended to remove those provisions relating to Scotland), or the Civil Procedure Rules, be set out?

Context: Rule 43 reproduces rule 27(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Other provisions of Part 4 of the 2008 Rules have not been reproduced because there is currently no practice direction under section 18(6)

of the Tribunals, Courts and Enforcement Act 2007 enabling judicial review proceedings to be commenced in the Lands Chamber. One consideration is that a case may be transferred to the Upper Tribunal by the High Court under section 31A of the Senior Courts Act 1981 at any stage of judicial review proceedings so that some directions may be required in any event.

10. Rule 56 is a provision found in the rules for the chambers of the First-tier Tribunal but not in the Tribunal Procedure (Upper Tribunal) Rules 2008. Is it either necessary or desirable?

When answering the consultation questions, please do keep in mind that the rules should be simple and easy to follow and should not include provisions that contain unnecessary requirements or repeat requirements that are contained elsewhere. TPC must secure the objectives set out in section 22(4) of the 2007 Act and it aims to do so in a consistent manner across all jurisdictions.

This consultation will run for a period of 16 weeks commencing from 30 March 2010 and closing on 20 July 2010.

How to Respond

Please send your response by **20th July 2010** to:

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Extra copies

Copies of this consultation can be obtained from using the above contact details and it is also available online at:

<http://www.tribunalservice.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>