

# **Consultation on amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to accommodate the transfer of The Financial Services and Markets Tribunal to the Upper Tribunal**

## **The Tribunals Service**

Tribunals deal with a wide range of disputes, mostly between individuals and the state, and were traditionally sponsored by the government department whose decisions they were reviewing. The need to reform the Tribunals system was first set out in Sir Andrew Leggatt's review '*Tribunals for Users - One System, One Service*'. The Government accepted his proposals and the Tribunals Service was created on 3 April 2006 as an executive agency of the Ministry of Justice (MoJ). It reflected the most radical change to this part of the justice system for 50 years.

The Tribunals Service was formed out of the 16 tribunals already administered by MoJ and in addition several other tribunals transferred into the Tribunals Service from other government departments. Work was further strengthened with the introduction of the Tribunals, Courts and Enforcement Act 2007 (the "Act"). This allowed for the creation of a new, simplified statutory framework for tribunals in the form of the First-tier Tribunal and the Upper Tribunal.

## **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.

The First-tier Tribunal and Upper Tribunal are divided into separate chambers which group together jurisdictions dealing with like subjects or requiring similar skills. In November 2008, three First-tier chambers were established; the Social Entitlement Chamber; the Health, Education and Social Care Chamber and the War Pensions and Armed Forces Compensation Chamber. The Administrative Appeals Chamber was created in the Upper Tribunal. In April 2009, the First-tier Tribunal (Tax Chamber) and the Upper Tribunal (Finance and Tax Chamber) - which has been

renamed to the upper Tribunal (Tax and Chancery Chamber) - were established. This was followed by the creation of the Upper Tribunal (Lands Chamber) on 1 June 2009. The First-tier Tribunal (General Regulatory Chamber) will be created on 1st September 2009.

### **Changes to the Financial Services and Markets Tribunal**

The Financial Services and Markets Tribunal (FinSMAT) is an independent judicial body established under Section 132 of the Financial Services and Markets Act 2000 which hears references arising from decision notices issued by the Financial Services Authority. Subject to Parliamentary approval, the jurisdiction of the Tribunal will become part of the Upper Tribunal (Tax and Chancery Chamber) in early 2010. There will be no change in onward appeal from the FinSMAT jurisdiction as a result of the transfer.

As with all tribunals moving into the new structure, existing rules will be revoked and will be replaced by chamber-specific rules. Each chamber in the First-tier Tribunal has its own set of rules, which are supported by Practice Directions and Statements. There is a single set of Rules that apply to the chambers in the Upper Tribunal.

This consultation seeks views on whether amendments to the existing rules for the Upper Tribunal will be required in order to incorporate the jurisdiction of the FinSMAT into the Upper Tribunal. Respondents are asked to note that the Tribunal Procedure Committee (TPC) will not submit rules to the Lord Chancellor unless and until the Government receives Parliamentary approval for the transfer of the functions of the FinSMAT.

### **Upper Tribunal Rules**

Rules for the Upper Tribunal are made by the TPC, the body established by the Act to make procedure rules for the First-tier and Upper Tribunals. The Committee is led by Lord Justice Elias, the former President of the Employment Appeal Tribunal. Its membership includes members of the Administrative Justice and Tribunals Council, the Bar Pro Bono Unit and Free Representation Unit. The Senior President of Tribunals, the Lord Chancellor, the Lord Chief Justice and the Lord President each appointed members to the TPC.

The Upper Tribunal Rules were laid before Parliament on 15 October 2008. They came into effect on 3 November 2008. Modifications following the establishment of the Tax and Chancery Chamber (Upper Tribunal) came into effect on 1 April 2009, and further amendments will come into effect on 1st September 2009. The Upper Tribunal Rules as they are from 1st September 2009 are attached to this consultation paper.

The intention behind the rules is to create as far as possible a single set of rules that can apply to all jurisdictions within the Tribunal rather than have several sets applying. 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 rules have been drafted so as to enable tried and tested procedures, which have been shown to have worked satisfactorily, to be retained.

In some instances there is a need for specific provisions to apply or not to apply to one or more jurisdictions, as indicated in these rules, but for the most part the intention is that the provisions should apply to all jurisdictions and be expressed in the same manner so that the rules meet the overriding objective, to deal with cases fairly and justly, in a consistent manner across all jurisdictions.

## **Structure of Upper Tribunal Rules**

The Rules are divided into six parts as follows:

### Part 1: Introduction

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

### Part 3: Proceedings before the Tribunal

This part covers the appeals process in the Upper Tribunal from applying for permission to appeal up to, but not including, the hearing itself.

### Part 4: Judicial Review Proceedings in the Upper Tribunal

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

### Part 5: 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 6: Decisions and Part 7: Correcting, Setting Aside, Reviewing and Appealing Decisions of the Upper Tribunal

Part 6 applies to the making and issuing of decisions by the Upper Tribunal. Part 7 applies to the process for any subsequent applications that can be made to the Upper Tribunal.

## **Consultation Questions**

The TPC would be interested in receiving your views as to whether there are:

- *Any areas in the Upper Tribunal Rules that should be amended to incorporate the jurisdiction of the FinSMAT in the Upper Tribunal?*
- *Any specific additions that are necessary to the Upper Tribunal Rules in order to incorporate the jurisdiction of the FinSMAT in the Upper Tribunal?*
- *Any current Upper Tribunal rules that should not apply to the jurisdiction in the Upper Tribunal?*

When answering, please do keep in mind that the Rules should be flexible and practical in order to provide for all the jurisdictions within the Upper Tribunal. In accordance with the Cabinet Office's Code of Practice on Consultation, this consultation will run for a period of 12 weeks from the date of this document.

### **How to Respond**

Please send your response by 23 November 2009 to:

The TPC Secretariat

Bay 2.38

102 Petty France

London SW1H 9AJ

Email: [TPCSecretariat@justice.gsi.gov.uk](mailto:TPCSecretariat@justice.gsi.gov.uk)

### Extra copies

Further copies of this consultation can be obtained from this address and it is also available online at:

[www.tribunalservice.gov.uk/tribunals/rules/tribunalprocedurecommittee.htm](http://www.tribunalservice.gov.uk/tribunals/rules/tribunalprocedurecommittee.htm)