

First-tier and Upper Tribunal Rules

Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007

Response to consultation on amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to accommodate the transfer of the Pensions Regulator Tribunal

(31 August 2009 – 23 November 2009)

Response from the Tribunal Procedure Committee

April 2010

Foreword by the Right Honourable Lord Justice Patrick Elias

The Tribunal Procedure Committee is charged with formulating procedural rules for tribunals which have become, or are becoming, part of the unified structure created by the Tribunals Courts and Enforcement Act 2007. The members of the Committee have between them a broad and diverse knowledge of the practical operation of the Tribunal system.

The Committee has been guided by the following principles: to make the rules as simple and streamlined as possible; to avoid unnecessarily technical language; to enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and to adopt common rules across tribunals wherever possible, so that rules specific to a chamber or a tribunal are permitted only where there is a clear and demonstrated need for them.

Inevitably experience will demonstrate difficulties with the operation of the rules, or gaps in their coverage. However, the Committee's remit is to keep rules under review, and periodic amendments can be made to try to ensure that the rules work as smoothly and fairly as possible.

Consultation is a fundamental part of the rule making process. Those involved in the day to day work of particular tribunals are often best placed to assess the potential impact of rule changes. We have benefited considerably from the responses to our consultations; they have helped eradicate errors, identify problems in the initial drafts, and suggested improvements. The Committee is extremely grateful to all who have taken the trouble to respond to the consultation documents. Even where proposed amendments have not been adopted, they have frequently generated important debates in the Committee which have helped sharpen the drafting process.

Contents

- 4. Introduction
 - 5. Background
 - 6. The Consultation Process
 - 10. The Respondents
 - 10. Keeping the rules under review
 - 11. Annex A - List of respondents
 - 12. Annex B - Membership of the Tribunal Procedure Committee
-

Introduction

This document is the post-consultation report for the consultation that led to:

- The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2010

Background

The Tribunal, Courts and Enforcement Act 2007 provides, in section 22 and Schedule 5, for a Tribunal Procedure Committee. The Committee was established in May 2008 and chaired until April 2010 by Patrick Elias. It has the function of making and amending Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal.

The intention behind the Upper Tribunal Rules is to create a single set of rules that can apply to all jurisdictions rather than have several sets of rules 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.

It was not intended to radically overhaul the existing processes within tribunals through these rules. The aim is to put all the rules in one place and reflect existing processes as far as possible. In some instances there is a need for specific provisions to apply or disapply 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.

The Tribunal Procedure Committee has an ongoing role in reviewing the rules and processes that lie behind them and bringing forward proposals where it is considered that changes to the procedure rules would improve existing processes for the benefit of users.

The jurisdiction of the Pensions Regulator Tribunal (PRT) transferred to the Upper Tribunal with effect from 6 April 2010. This response outlines the decisions the Committee took in light of the responses received from the consultation, which invited comment on what changes were needed to the Upper Tribunal Rules in order to accommodate the transfer of PRT into the Upper Tribunal.

The Consultation Process

As with all tribunals moving into the unified tribunals' structure, existing rules are revoked and replaced by chamber-specific rules. There is a single set of Rules that apply to the chambers in the Upper Tribunal, which are supported by Practice Directions and Statements.

The consultation sought views on whether amendments to the existing rules for the Upper Tribunal would be required in order to incorporate the jurisdiction of the PRT into the Upper Tribunal. The consultation period began on 31 August 2009.

The Committee invited Colin Bishopp, an Upper Tribunal Judge and current PRT judge, to join the Committee for the purposes of considering the responses to the consultation. His experience was invaluable in helping the Committee to consider the issues that arose in this jurisdiction.

The jurisdiction of PRT is closely related to the Financial Services and Markets Tribunal which transferred into the Upper Tribunal also with effect from 6 April 2010. The Committee conducted a separate consultation exercise for the Financial Services and Markets Tribunal but many of the decisions were made in respect of both jurisdictions given that both sets of existing rules were identical in many parts.

There were 3 questions in the consultation namely:

- Any areas in the Upper Tribunal Rules that should be amended to incorporate the jurisdiction of the PRT in the Upper Tribunal?
- Any specific additions that are necessary to the Upper Tribunal Rules in order to incorporate the jurisdiction of the PRT in the Upper Tribunal?

- Any current Upper Tribunal rules that should not apply to the jurisdiction in the Upper Tribunal?

As there were 3 respondents to the consultation, the response provides the Committee's decision in respect of the comments made.

Prior to transfer to the Upper Tribunal, PRT had its own separate rules namely the Pensions Regulator Tribunal Rules 2005. Some respondents used reference to these Rules in their responses to illustrate their points. Where this occurs they are referred to as the '2005 Rules.'

General Observations

Respondents highlighted that unlike existing Upper Tribunal cases, Pension Regulator cases were not in their nature an appeal nor a form of judicial review and because of this some rules were not suitable for these jurisdictions without substantial amendment. Two respondents believed that separate rules should be made for financial services cases whilst the remaining respondent highlighted the need for substantial amendments.

Response

The Committee decided that whilst a completely separate set of rules was not appropriate, there was a need to accommodate the special needs for Pension Regulator cases. However, taking these views into account, the Tribunal Procedure Committee inserted a new Schedule 3 in the Upper Tribunal Rules to provide for procedures that apply to financial services cases (which include Pension Regulator cases) only. The remaining Upper Tribunal Rules apply for financial services cases unless expressly excluded. Other amendments were made to the main body of the Upper Tribunal Rules to accommodate financial services cases.

Issues from the responses with the decision of the Committee

1. One respondent highlighted that the current Upper Tribunal Rules only allowed for appeals and needed to reflect that references were made within the Pensions Regulator jurisdiction.

Decision

The Committee accepted this and a new definition was inserted for financial services cases to accommodate references.

2. One respondent believed that whilst there was value in standardising the rules as far as possible, there was a need to consider importing aspect of the 2005 Rules where the Upper Tribunal Rules were silent.

Decision

The Committee accepted this and provided specific rules for financial services cases, particularly in the new Schedule 3 of the Upper Tribunal Rules.

3. One respondent highlighted that the Pensions Act 2004 sets out requirements – in particular at section 103 – that, on determining a reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as the Tribunal considers appropriate to give effect to its determination. The current Upper Tribunal Rules do not envisage this possibility, which would place them in conflict with the current provisions of the PRT.

Decision

The Committee did not make any amendment in this regard given that the provisions in the primary legislation are unaffected by the transfer of PRT into the unified structure.

The Respondents

A total of 3 responses to the consultation were received, by email and post. A list of the respondents can be found at [Annex A](#).

Keeping the Rules under review

The Tribunal Procedure Committee wishes to thank all those who contributed to this consultation process.

The Committee will monitor the operation of the Rules and will make amendments as and when it appears necessary. Any suggestions for amendments should be sent to the Tribunal Procedure Committee Secretariat at the address below.

Contact details

Further copies of this report and the rules can be obtained by contacting the Tribunal Procedure Committee Secretariat at the address below:

**TPC Secretariat
Area 2.38
2nd Floor
102 Petty France
London
SW1H 9AJ**

Email: tpcsecretariat@justice.gsi.gov.uk

This report and the Rules are also available on the website:
www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm

Annex A

List of respondents to the Pensions Regulator Tribunal Consultation

John Scampion – Pensions Regulator Determinations Panel

Sir Stephen Oliver

The Honourable Mr Justice Warren

Annex B

Membership of the Tribunal Procedure Committee

(as at March 2010)

Lord Justice Patrick Elias (Chair)

Bronwyn McKenna

Douglas May QC

Mark Rowland

Nick Warren

Philip Brook Smith QC

Carolyn Kirby

Michael James Reed

Lesley Clare

Alison McKenna

Peter Lane

George Bartlett QC