EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS) (AMENDMENT NO. 2) ORDER 2017

2017 No. 1169

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 2) Order 2017 ("the Order") amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655) ("the Chambers Order"). The Chambers Order organises the First-tier Tribunal and Upper Tribunal into Chambers. The Order allocates to individual Chambers, functions of the First-tier Tribunal and Upper Tribunal in proceedings under devolved Welsh tax legislation and functions of the Upper Tribunal in proceedings under Schedule 3A to the Communications Act 2003 and the Riot Compensation Act 2016.

3. Matters of special interest to Parliament

Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 3 of the Tribunals, Courts, and Enforcement Act 2007 establishes the First-tier Tribunal and the Upper Tribunal.

4.2 Section 7 of the Act provides that the Lord Chancellor may, with the concurrence of the Senior President of Tribunals, organise the two Tribunals into Chambers and specify the allocation of functions within each Chamber. The Chambers Order puts in place the legislation necessary to support the transfer of new jurisdictions into the First-tier Tribunal and Upper Tribunal.

The Chambers Order requires the concurrence of the Senior President of Tribunals. The provision for this is in section 7(9) of the Tribunals, Courts, and Enforcement Act 2007.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 to reflect a new jurisdiction of the First-tier Tribunal and the Upper Tribunal under Welsh devolved legislation and a new jurisdiction of the Upper Tribunal under Schedule 3A to the Communications Act 2003 and the Riot Compensation Act 2016.

7.2 The Tax Collection and Management (Wales) Act 2016 establishes the Welsh Revenue Authority (WRA), which is to be the body responsible for the collection and management of devolved taxes in Wales. It introduces rights of appeal to the First-tier Tribunal against decisions of the WRA and rights to make applications to the Upper Tribunal. The Order allocates to the Tax Chamber of the First-tier Tribunal, First-tier Tribunal functions in this respect and it allocates to the Tax and Chancery Chamber of the Upper Tribunal, the Upper Tribunal functions in this respect.

7.3 The code in Schedule 3A to the Communications Act 2003 (inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017) sets out the basis on which electronic communications operators, authorised by Ofcom under section 106 of the Communications Act 2003, may exercise rights to deploy and maintain their apparatus on, over and under land. In England and Wales, the county court has jurisdiction for most disputes under the code. However, paragraph 94 of the code enables the Secretary of State to make regulations to confer jurisdiction for such disputes on the Upper Tribunal. The Secretary of State has exercised this power and laid the Electronic Communications Code (Jurisdiction) Regulations 2017 before Parliament on 19 November 2017, and will come into force when the code commences. The Riot Compensation Act 2016 provides that individuals or businesses who experience loss as a result of a riot may claim compensation from their local Police and Crime Commissioner or Mayor (in the case of London and Manchester). The Riot Compensation Regulations 2017, made under the Riot Compensation Act 2016, set out the procedures for the review of a decision on a claim and introduce a right of appeal to the Upper Tribunal against any review decision. The Order allocates this new work to the Lands Chamber of the Upper Tribunal.

Consolidation

7.4 An informally consolidated version of the "The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655)" which incorporates all of the amendment Statutory Instruments (SIs) into the original statutory instrument can be found on the GOV.UK website at:

https://www.gov.uk/government/publications?departments[]=tribunal-procedure-committee

8. Consultation outcome

8.1 No public consultation has been undertaken in relation to the amendments made in the Chambers Order as no significant, impact on the private, voluntary or public sectors is foreseen.

8.2 The Home Office consulted on a proposal in 2014 to introduce a right of appeal rather than continue to offer the ability to take individual claims before the court. The proposal to introduce an appeal to the Tribunal was supported by most respondents to the consultation. The Home Office published a response to the consultation. Please see link:

https://www.gov.uk/government/consultations/reform-of-the-riot-damages-act--2

8.3 In relation to the Electronic Communication Code, in Chapter 9 of their report, the Law Commission recommended that the forum for almost all code disputes should, in England and Wales, be the Lands Chamber of the Upper Tribunal, stating that "this will be one of the most important changes brought in by the revised Code; [as] many consultees regarded it as crucial for the revised Code to be backed by an adjudication system with more specialist expertise than the County Court can offer". DCMS agreed with that recommendation. In subsequent discussions with the Scottish Government consensus was reached that the specialist lands tribunals in that jurisdiction was the appropriate forum to hear disputes under the code. This change has broad support from stakeholders and Government believes that changing the forum for code disputes is an essential change which will see disputes handled faster and more effectively by drawing upon the specialist expertise of the relevant Lands Tribunals. Please see link:

https://www.gov.uk/government/consultations/consultation-on-reforming-the-electronic-communications-code

9. Guidance

9.1 Her Majesty's Courts and Tribunals Service produces guidance for all tribunal jurisdictions which is issued to parties at key stages of the appeals process and is available on the website at: http://www.justice.gov.uk/tribunals.

10. Impact

10.1 The instrument does not propose to put regulatory burdens on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as its impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared.

11. Regulating small business

11.1 The legislation does not apply to activities undertaken by small businesses.

12. Monitoring & review

12.1 The Ministry of Justice will keep the First-tier Tribunal and Upper Tribunal Chamber Order under review.

13. Contact

13.1 Vijay Parkash at the Ministry of Justice Telephone: 0203 334 4471 or email: Vijay.Parkash@justice.gov.uk can answer any queries regarding the instrument.