EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS) (AMENDMENT NO. 2) ORDER 2024

2024 No. 1285

1. Introduction

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

2. Declaration

2.1 Heidi Alexander MP, Minister of State for Courts and Legal Services at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Dominic Lake, Deputy Director for Civil, Tribunals, and Administration of Justice, at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Asmita Majumder at the Ministry of Justice Telephone: 07900288834 or email: asmita.majumder@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 ("the 2010 Order") to make provision for appeals under a scheme established under section 49(1) of the Victims and Prisoners Act 2024 ("the 2024 Act"), to be allocated to the Social Entitlement Chamber of the First-tier Tribunal ("the SEC"). The scheme presently established under section 49(1) of the 2024 Act is the Infected Blood Compensation Scheme established by the Infected Blood Compensation Scheme Regulations 2024 ("the 2024 Compensation Regulations").

4.2 Additionally, this Order amends the 2010 Order to reallocate proceedings under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ("the Energy Efficiency Regulations") from the General Regulatory Chamber of the First-tier Tribunal ("the GRC") to the Property Chamber of the First-tier Tribunal ("the Property Chamber"), as the Property Chamber is more suitable to deal with these proceedings.

Where does the legislation extend to, and apply?

4.3 This Order extends to England and Wales, Scotland and Northern Ireland.

4.4 Practically, proceedings in relation to the 2024 Compensation Regulations may relate to England and Wales, Scotland and Northern Ireland, and proceedings in relation to the Energy Efficiency Regulations may relate to England and Wales, according to the extent of the Acts under which those proceedings are established respectively.

5. Policy Context

What is being done and why?

Infected Blood Compensation Scheme appeals

5.1 Section 49(1) of the 2024 Act places a duty on the Secretary of State or the Minister for the Cabinet Office to establish by regulations, the Infected Blood Compensation Scheme ("the Scheme"), for the making of payments to eligible persons who received infected blood or infected blood products[1]. The Scheme was established under the 2024 Compensation Regulations, which came into force on 23 August 2024. Regulation 42 of the 2024 Compensation Regulations provides a right of appeal to the First-tier Tribunal, against a decision of the Infected Blood Compensation Authority following a review of its decision made under the Scheme.

5.2 An amendment to the 2010 Order is needed to accommodate this new jurisdiction. As this is an issue of social entitlement it follows that these appeals should be allocated to the SEC. The SEC has the necessary expertise to deal with this new jurisdiction, as it already deals with compensation schemes for medical harm and personal injury covering eligibility criteria, causation and assessment of compensation. This approach is supported by the Chamber President of the Social Entitlement Chamber, the Senior President of Tribunals ("the SPT"), and the Cabinet Office.

Energy Efficiency appeals

5.3 The Energy Efficiency Regulations introduced measures to improve the energy efficiency of private rented property in England and Wales. Currently, cases brought under sections 17 and 43 of the Energy Efficiency Regulations are allocated to the GRC. However, the Chamber Presidents of the GRC and the Property Chamber have requested that these proceedings are reallocated to the Property Chamber.

5.4 Following further discussion with the respective Chamber Presidents, and in consultation with the SPT, the Ministry's view is that it is appropriate for these proceedings to be reallocated to the Property Chamber, as that Chamber has the most relevant expertise to deal with such matters, as it already has jurisdiction to hear proceedings of a similar nature.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 1 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") created a two-tier tribunal system into which existing tribunals can be transferred, or new appeal rights directed. Section 3 of the 2007 Act establishes the First-tier Tribunal and the Upper Tribunal, which together make up this two-tier system.

6.2 Section 7 of the 2007 Act provides that the Lord Chancellor may, with the concurrence of the Senior President of Tribunals, organise the First-tier Tribunal and Upper Tribunal into Chambers and specify the allocation of functions between these Chambers. The 2010 Order has been made in exercise of that power and it specifies the functions that are allocated to each of the Chambers of the First-tier Tribunal and the Upper Tribunal.

[1] The Infected Blood Inquiry examined the circumstances in which NHS patients were given infected blood and blood products and the impact of these infections. It also examined the response of the Government and other bodies to the use of infected blood or blood products by the NHS. The Inquiry published its final report on 20 May 2024 (https://www.infectedbloodinquiry.org.uk/reports/inquiry-report).

6.3 This Order amends article 3(a) of the 2010 Order, to include proceedings under the Energy Efficiency Regulations as a function of the Property Chamber. A consequential amendment is made to article 5A of the 2010 Order, to ensure that these proceedings are no longer a function of the GRC.

6.4 In addition, this Order amends article 6 of the 2010 Order to include appeals under a scheme established under section 49(1) of the 2024 Act, (currently established by the 2024 Compensation Regulations) as a function of the SEC.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 7(9) of the 2007 Act, the Lord Chancellor with the concurrence of the Senior President of the Tribunals, can allocate specific functions between the different chambers of the First-tier Tribunal and Upper Tribunal.

7.2 The Lord Chancellor has consulted the SPT who agrees with these allocations. In addition, the Lord Chancellor has considered the views of the Chamber Presidents of the SEC (with respect to the Infected Blood Compensation appeals), the Property Chamber and the GRC (with respect to appeals under the Energy Efficiency Regulations), who are also supportive of the changes made by this Order.

8. Applicable Guidance

8.1 This Order does not attract the need for guidance but general information about tribunals can be found on the Ministry of Justice website at: https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the changes made by this instrument are technical in nature, as such we do not expect any businesses to be impacted.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the impact is expected to be minimal.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Ministry of Justice continually keeps Tribunal performance under review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").