EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS) (AMENDMENT) ORDER 2024

2024 No. 376

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. Purpose of the instrument

2.1 This Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655) ("the 2010 Order") to allocate all proceedings under Schedule 3A to the Communications Act 2003 (c. 21) ("the Electronic Communications Code") to the Property Chamber of the First-tier Tribunal and makes consequential amendments and savings provisions.

2.2 Additionally, this Order allocates appeals against the exercise by the Gambling Commission of functions under Part 3 of the Finance Act 2022 (c. 3) ("economic crime (anti-money laundering) levy") to the Tax Chamber of the First-tier Tribunal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 This Order applies and extends to England and Wales, Scotland and Northern Ireland. Practically, proceedings in relation to the economic crime (anti-money laundering) levy may relate to any of England and Wales, Scotland or Northern Ireland; proceedings in relation to the Electronic Communications Code may relate to England and Wales, according to the extent of the Acts under which those proceedings are established respectively.

5. European Convention on Human Rights

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

6. Legislative Context

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.

6.3 This Order amends the 2010 Order to reflect the conferral of further jurisdictions on the First-tier Tribunal relating to Electronic Communications Code proceedings by the Electronic Communications Code (Jurisdiction) (Amendment) Regulations 2023 (S.I. 2017/1284). This Order allocates those proceedings to the Property Chamber of the First-tier Tribunal. It also makes consequential amendments and savings provisions in relation to the allocation of Electronic Communication Code proceedings that were commenced in the Upper Tribunal before the date this Order comes into force.

6.4 Additionally, this Order makes provision for appeals against the exercise by the Gambling Commission of functions under Part 3 of the Finance Act 2022 to be allocated to the Tax Chamber of the First-tier Tribunal; appeals against the exercise of related functions by His Majesty's Revenue and Customs ("HMRC") are already allocated to that Chamber.

7. Policy background

What is being done and why?

Electronic Communication Code Cases

7.1 The Electronic Communications Code ("Code") is set out in Schedule 3A to the Communications Act 2003 and provides the basis on which electronic communications operators may exercise rights to deploy and maintain their electronic apparatus on, over and under land. The Department of Science, Innovation and Technology (DSIT) are amending the Electronic Communications Code (Jurisdiction) Regulations 2017 (S.I 2017/1284) ("Jurisdiction Regulations") by way of the Electronic Communications Code (Jurisdiction) (Amendment) Regulations 2023 (S.I. 2017/1284) which comes into force on 6 April 2024 to confer the First-tier Tribunal with jurisdiction to hear all Code cases for Wales, and to remove the requirement for certain Code cases to be commenced in the Upper Tribunal. The effect of the amendments made to the Jurisdiction Regulations is to provide both the First-tier Tribunal and the Upper Tribunal with concurrent jurisdiction to hear all Code cases in relation to England and Wales.

7.2 It is considered appropriate to amend the 2010 Order to allocate all Code cases to the Property Chamber of the First-tier Tribunal, rather than for cases to remain allocated to the Lands Chamber of the Upper Tribunal, which is presently the case (with the exception of Part 4A Code cases). This will ensure that only those Code cases that are more complex and more suitable to be heard in the Upper Tribunal are transferred from the First-tier Tribunal to the Upper Tribunal for determination. This approach is supported by both the President of the Property Chamber of the First-tier Tribunal and the President of the Lands Chamber of the Upper Tribunal as well as the Senior President of Tribunals and DSIT.

Economic crime (anti-money laundering) levy

7.3 Part 3 of the Finance Act 2022 establishes a new tax called the economic crime (anti-money laundering) levy ("the levy") and defines the appropriate collection authorities for the levy as HMRC, the Financial Conduct Authority and the Gambling Commission, with each entity responsible for collecting the levy as established by the Act. Under the Economic Crime (Anti-Money Laundering) Levy (Amendment) Regulations 2023 (S.I. 2023/369), decisions of the Gambling Commission and HMRC in respect of specified levy decisions are appealable to the First-tier Tribunal.

7.4 Under article 3 of the 2010 Order appeals against decisions of the Gambling Commission in relation to the levy would by default be allocated to the General Regulatory Chamber of the First-tier Tribunal.

7.5 However, appeals against HMRC decisions, in relation to the levy, would under article 7A, by default, be allocated to the Tax Chamber of the First-tier Tribunal, as this Chamber is already allocated to hear all appeals against decisions of the HMRC. Following consultation with the Senior President of Tribunals, Chamber Presidents, HMRC and the Gambling Commission, our view is that the most appropriate Chamber to hear appeals against decisions of the Gambling Commission in respect to levy proceedings would be the Tax Chamber. This Order amends the 2010 Order to allocate such appeals to the Tax Chamber.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is taking place.

10. Consultation outcome

10.1 In accordance with section 7(9) of the Tribunal Courts and Enforcement Act 2007, 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.

10.2 We have consulted with the Senior President of Tribunals who agrees with these allocations. In addition, we have considered the views of both the Chamber Presidents of the Tax Chamber and the General Regulatory Chamber, HMRC and the Gambling Commission who are also supportive of the changes made by this Order.

11. Guidance

11.1 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

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

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

15. Contact

15.1 Nick Peel at the Ministry of Justice Telephone: 07977 219569 or email: nick.peel@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Cathryn Hannah, Deputy Director for the Tribunals, Legal Support, Dispute Resolution and Fees Team, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.