EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT NO. 2) RULES 2021

2021 No. 1183 (L. 16)

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Rule 3 of this instrument addresses a point identified by the Joint Committee on Statutory Instruments in its Second Report of Session 2021-22 (see paragraph 7.2 below).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

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. Both Tribunals are divided into Chambers which deal with different areas of jurisdiction e.g. health, immigration and asylum and education. In addition to statutory appeals, the Upper Tribunal also deals with certain kinds of judicial reviews.

6.2 The 2007 Act provides for tribunal procedure rules to be made by the Tribunal Procedure Committee, and deals with the process of making, and the content of, those rules.

7. Policy background

What is being done and why?

Amendments to Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

7.1 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are amended to allow the Property Chamber of the First-tier Tribunal to award costs in cases brought under Part 4A of Schedule 3A to the Communications Act 2003 ('the Electronic Communications Code'). Part 4A has been inserted to Schedule 3A to the Communications Act 2003 by the Telecommunications Infrastructure (Leasehold Property) Act 2021 ("TILPA"). TILPA also amends regulation 3 of the Electronic Communications Code (Jurisdictions) Regulations 2017 to allow functions conferred by the Electronic Communications Code on the court, to also be exercised by the First-tier Tribunal in connection with Part 4A proceedings in relation to England and Wales.

Amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

7.2 An amendment to rule 10(4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 is made to insert a cross-reference to notice of a deemed withdrawal under rule 17(8) of those Rules. This would correct an omission "missed consequential" in the amending rules (the Tribunal Procedure (Amendment) Rules 2021 (S.I. 2021/322) identified by the Joint Committee on Statutory Instruments in its Second Report of Session 2021-22. Correcting the omission ensures that the time limit for making an application for a costs order under rule 10(1) applies in relation to such a deemed withdrawal in the same way as it applies to a withdrawal which takes effect following a notice of withdrawal by a party.

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 Informally consolidated versions of these rules will be updated onto the Justice website when the instruments come into force. They will be found at: https://www.gov.uk/government/publications?departments[]=tribunal-procedure-committee.

10. Consultation outcome

10.1 Possible amendments to the Tribunal Procedure (General Regulatory Chamber) Rules 2009 in relation to withdrawals of appeals was the subject of a public consultation by the Tribunal Procedure Committee. The consultation ran over the period May to August 2020. There were four responses to the consultation. A copy of the Tribunal Procedure Committee consultation can be found here: https://www.gov.uk/government/consultations/possible-changes-to-the-first-tier-tribunal-general-regulatory-chamber-rules-2009.

10.2 In accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the Tribunal Procedure Committee has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders.

This includes the Lord President of the Court of Session, Tribunal Chamber Presidents, senior judiciary, policy officials in the Information Commissioner's Office and Her Majesty's Courts and Tribunals Service.

11. Guidance

11.1 Her Majesty's Courts and Tribunals Service produces guidance for each Tribunal jurisdiction 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.

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 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.

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 approach to monitoring of this legislation in respect to the impact of any changes to the Tribunal Procedure Rules is monitored by the Tribunal Procedure Committee by way of feedback from the Tribunal and users.

15. Contact

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

15.2 Kate Gregory-Smith, Deputy Director for Courts and Transparency Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under-Secretary of State James Cartlidge MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.