EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT) (No.2) RULES 2011

2011 No. 2840 (L.20)

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

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

2. Purpose of the instrument

2.1 The Tribunal Procedure (Amendment) (No.2) Rules 2011 ("the Amending Rules") will make consequential changes to the Asylum and Immigration Tribunal (Procedure) Rules 2005 ("the Principal Rules") to take account of the introduction of fees when an appeal is given to the Immigration and Asylum Chamber of First-tier Tribunal ("the FtTIAC"). It also makes other minor changes to the Principle Rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 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 eg health, education and social care, immigration and asylum. The different chambers have their own sets of rules, based on a common core but with variations to fit their specialist business

4.2 Section 22 of the 2007 Act provides for Tribunal Procedure Rules to be made, governing the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal. It also provides for the rules to be made by the Tribunal Procedure Committee. Schedule 5 to the 2007 Act makes provision for the process of making the rules, and the content of those rules.

4.3 The Principal Rules are those which apply where an appeal is brought against a decision of the United Kingdom Border Agency (UKBA) in a matter of immigration, asylum or nationality and considered by the FtTIAC. Fees will be charged under the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 ("the Fees Order") - which was approved by Parliament on 12th

October and which will come into force on the same date as the Amending Rules (19th December). The Fees Order prescribes fees to be paid by a person who has given, or who proposes to give, a notice of appeal to the FtTIAC. The Fees Order also makes provision for exemptions and the reduction, remission or deferment of fees and for refunds. The Amending Rules make changes which consequential to the requirement to pay fees.

5. Territorial Extent and Application

5.1 This instrument applies to 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 Principal Rules are amended to require that the notice of appeal be accompanied by an application for a certificate of fee of satisfaction, required by the Fees Order. The Tribunal must refuse to accept an appeal where the Lord Chancellor has refused to issue a certificate. Where the Lord Chancellor issues a certificate and the Tribunal accepts the appeal but the Lord Chancellor later revokes the certificate, the Tribunal must strike out the appeal.

7.2 To support the implementation of fees in the FtTIAC, the Amending Rules also remove the option for out of country appellants to send their notice of appeal to the UKBA decision maker overseas. In future they will be required to send it to the Tribunal. Maintaining such a 'dual lodgement' system would have made the introduction of fees in the FtTIAC impractical.

7.3 The rule on costs in the Principal Rules is amended to give the FtTIAC discretion to make an award of costs limited to the amount of any fee paid in cases where they consider that it is reasonable to do so. Those costs are to be paid by UKBA.

- *Consolidation*

7.4 The Tribunal Procedure Committee plan to consolidate the Principal Rules during 2012. An informal consolidated text is kept on the Ministry of Justice website for the assistance of the public. That text will be revised to include these amendments when the Amending Rules come into effect at:

http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/rules.htm

8. Consultation outcome

8.1 A public consultation on the introduction of immigration and asylum appeal fees ran from 21 October 2010 to 21 January 2011. A copy of the consultation paper entitled *"Introducing Fee Charges for Appeals in the Immigration and Asylum Chambers of the First –Tier Tribunal and the Upper Tribunal"*, summary of responses, and the Government's official response can be found at:

http://www.justice.gov.uk/consultations/consultations-CP10-10.htm

8.2 A chapter of that consultation was agreed with the Tribunal Procedure Committee to ask for views on what amendments might be required to the Principle Rules to support the introduction of fees in the FtTIAC. A total of 27 responses to the consultation paper were received. Respondents to the consultation were generally opposed to the introduction of fees and very few responded substantively on the issue of rules amendments.

8.3 In considering responses to the consultation, the Government identified several significant policy issues. Those issues and changes to the original proposals put forward in the consultation paper are detailed in the Explanatory Memorandum which accompanied the Fees Order when laid in Parliament.

9. Guidance

9.1 Each notice of decision issued by UKBA with an appeal right will be accompanied by the appropriate appeal form and guidance. Contained within guidance will be information on exemptions and remissions, how to pay the fee, methods by which payment can be made, who can pay the fee, and the consequences of not paying the fee.

9.2 Appeal form and guidance, together with a range of frequently asked questions will also be available from the MoJ website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is included in the Impact Assessment laid with the Fees Order.

10.2 The impact on the public sector is included in the Impact Assessment laid with the Fees Order.

10.3 An Impact Assessment was attached to the Fees Order Explanatory Memorandum and is published on the website www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government has committed to setting regular review periods to monitor fee levels and the impact of the implementation of fees, and policy will be revised and amended accordingly. We will identify any further evidence available about the impact of the introduction of fees on the vulnerable groups identified in the consultation response, and remain aware that the impact of any proposed policy changes from MoJ or other departments will need to be carefully considered when conducting any review. Any significant changes to current proposals will involve further consultation if appropriate.

13. Contact

Mr Tom Matley at the Ministry of Justice Tel: 0161 234 2055 or email: tom.matley@hmcts.gsi.gov.uk can answer any queries regarding the instrument.