EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2014

2014 No. 514 (L. 4)

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

2. Purpose of the instrument

2.1. The Tribunal Procedure (Amendment) Rules 2014 ("the Rules") implement desirable improvements to four set of procedure rules in the light of proposals made and changes to legislation affecting the jurisdiction of the First-tier Tribunal and Upper Tribunal. They also take account of some changes in legislation which affects the jurisdiction of those tribunals.

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 previously existing tribunals could be transferred and to which new appeal rights could be conferred. The First-tier Tribunal and the Upper Tribunal 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.

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 ("TPC"). Schedule 5 to the 2007 Act makes provision for the process of making the rules, and the content of those rules.

5. Territorial Extent and Application

5.1. The Rules extend to the whole of the UK because the rules which are being amended or inserted apply to functions which the First-tier Tribunal or the Upper Tribunal have in the different parts of the UK.

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 Rules make amendments to;

- the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber Rules) 2008 regarding preliminary examinations in mental health cases;

- the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, omitting a clause on time limits for child benefit and guardians' allowance appeals;
- the Tribunal Procedure (Upper Tribunal) Rules 2008, giving effect to the EU Regulation on wholesale energy market integrity and transparency ("REMIT"); and
- the Tribunal Procedure (Upper Tribunal) Rules 2008 and Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 relating to applications to the Upper Tribunal for permission to apply for judicial review or to appeal.

Amendments to the Health, Education and Social Care Chamber Rules

7.2. The Rules amend the First-tier Tribunal (Health, Education and Social Care) Chamber Rules 2008 when dealing with preliminary examinations in mental health cases, and make the requirement for one discretionary.

7.3. At present the requirement for cases under the Mental Health Act 1983, is that there must be a medical examination of the patient by the medically qualified member of the tribunal before the case is heard. Examinations often take place on the same day as the hearing, causing additional distress for patients on top of any anxieties they already have about the hearing. This also puts more time pressure on the Tribunal on the day. The TPC considered that preliminary examinations are not required in all cases. Tribunals must have more discretion on when the examination should take place. However it considered there should always be an examination when the patient requests one or where a patient is admitted for assessment under section 2 of the Mental Health Act.

7.4. Amended rule 34 allows the Tribunal to form an opinion of the patient's mental condition and if necessary make direction for a medical examination. The amendment also allows a patient to apply for a medical examination by giving 14 days notice to the Tribunal, in writing, before the hearing. Amended rule 32(9) requires the responsible authority to provide records of the patient's mental health and detention history only when directed to do so by tribunal. The rule also allows the Tribunal to inspect the after-care services records and take copies and make notes. Amended Rule 39 allows the Tribunal to adjourn a hearing where the patient decided not to attend or, unless the requirements of rule 34 have been satisfied, is no longer required.

Amendments to the Upper Tribunal Rules

7.5. Amendments have been made to Upper Tribunal Rules in support of the rights of appeal ("references") which facilitate enforcement of the EU Regulation on wholesale energy market integrity and transparency (OJ No L 326, 08.12.2011, pl)("REMIT").

7.6. The decisions made by the regulatory authorities in Great Britain and Northern Ireland respectively can be appealed in relation to making restitution (regulation 25), imposing penalties (regulation 31) or relating to certain rights of third parties (regulation 40) in each of two sets of Regulations: the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc) Regulations 2013 (S.I. 2013/1389) and the Electricity and Gas (Market Integrity and Transparency (Enforcement etc) Regulations (Northern Ireland) 2013 (S.R.&O. 2013/208).

7.7. The procedures for handling such references will be similar to those which are already contained in Schedule 3 to the Upper Tribunal Rules which apply to the determination of financial services cases.

Amendments to Upper Tribunal and Upper Tribunal (Lands Chamber) Rules

7.8. Some minor and clarificatory amendments are being made relating to applications to the Upper Tribunal for permission to apply for judicial review or to appeal. The amendments are in relation to reconsiderations of refusal to admit late applications and applications for permission to appeal. Other amendments have also been made to clarify that a party can ask the Upper Tribunal to grant permission to appeal on other grounds where the First-tier Tribunal has only granted permission on limited grounds. Amendments bring the rules of procedure in the Upper Tribunal in line with the Civil Procedure Rules which apply in the High Court. The amendments were recommended by First-tier and Upper Tribunal Judges.

- ***Consolidation***

7.9. Consolidated versions of Tribunal Procedure Rules will be updated on the Justice website when this instrument comes into force. They can be found at: http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/rules.htm

8. Consultation outcome

8.1. During the summer of 2013, the TPC ran a 12 week public consultation exercise on the proposed rule amendments to the HESC Rules to make the requirement of preliminary examinations in every case discretionary. It closed on 10 September 2013 and a total of 103 responses were received.

8.2. The issues raised by respondents were considered in detail over the course of several meetings and set out in the TPC's forthcoming response which can be found at: http://www.justice.gov.uk/about/tribunal-procedure-committee/ts-committee-closed-consultations. The consultation document can also be found on the website.

8.3. No public consultation was undertaken in relation to the other amendments. The TPC has consulted with the relevant judiciary, including Chamber Presidents, in both the First-tier and Upper Tribunal, the President of the Court of Session, operational colleagues in Her Majesty's Courts and Tribunal Service (HMCTS) and with other Government departments.

9. Guidance

9.1. HMCTS produce guidance for all tribunal jurisdictions which are routinely issued to appellants at key stages of the appeals process and are available on the HMCTS website at http://www.justice.gov.uk/about/hmcts.

9.2. The guidance is updated as required to reflect changes to procedure.

10. Impact

10.1. The impact on business, charities and voluntary bodies is nil.

10.2. The impact on the public sector is nil.

10.3. An impact assessment has not been prepared for this instrument. A Regulatory Impact Assessment (RIA) was prepared for the 2007 Act. This can be found at: http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm.
The RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals, bringing tribunals together in one organisation. No additional costs have been identified from the setting up of the First-tier Tribunal and

Upper Tribunal in the first 3 years and no further costs have been identified since to change this assumption.

11. Regulating small business

11.1. The legislation does not impact on small businesses.

12. Monitoring & review

12.1. The Ministry of Justice will keep the tribunal rules continually under review.

13. Contact

13.1. Pushkar Kapole or Julie McCallen, at the TPC Secretariat, (Pushkar.Kapole@Justice.gsi.gov.uk or Julie.Mcallen@justice.gsi.gov.uk) can answer any queries about this instrument.