EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2015

2015 No. 1510 (L. 19)

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 2015 ("Amendment Rules") make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008, and the Tribunal Procedure (Health, Education and Social Care Chamber) Rules 2008 and the Tribunal Procedure (Social Entitlement Chamber) Rules 2008 that apply in the First-tier Tribunal.

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 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 The 2007 Act also provides for Tribunal Procedure Rules to be made by the Tribunal Procedure Committee ("TPC"), and deals with the process of making, and the content of, those rules.

5. Territorial Extent and Application

5.1 The instruments extend 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***

Amendments to the Upper Tribunal Rules

7.1 In January 2015, the Tribunal Functions (Transport Order) 2015 transferred the Quality Contract Scheme (QCS) jurisdiction of the Transport Tribunal into the Upper Tribunal.

7.2 The Amendment Rules make consequential changes to the Tribunal Procedure (Upper Tribunal) Rules 2008 by introducing new appeals provisions in relation to QCS under Part 2 of the Transport Act 2000. A new Schedule is also inserted to set out provisions in relation to the documentation required for QCS cases, a right of inspection for such documents and leave for both the parties to the proceedings to add further parties.

Amendments to the Health, Education and Social Care Chamber Rules

7.3 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 to incorporate a new right of appeal to the First-tier Tribunal against decisions made by the Department for Education (DfE) in relation to applications for registration for the status of 'Non-Maintained Special School'.

7.4 In September 2015 DfE's existing Education (Non-Maintained Special Schools) (England) Regulations 2011 will be revoked and replaced by the Education (Non-Maintained Special Schools) (England) Regulations 2015 (the 2015 Regulations). The 2015 Regulations will enable the Secretary of State for Education to apply to a justice of the peace for an emergency closure order of a non-maintained special school. An appeal against such an order will lie to the First-tier Tribunal.

7.5 A consequential amendment is made to the definition of "respondent" in rule 1(3) to take account of the 2015 Regulations. By generalising the point that the correct respondent in cases where the order under appeal was made by a justice of the peace is the person who applied to the magistrates' court for that order, it has been possible to remove the specific references to the Care Standards Act 2000, the Health and Social Care Act 2008 and the Education and Skills Act 2008, which also provide for appeals against an order made by a justice of the peace.

7.6 The definition of "respondent" is also amended to identify the correct respondent in claims brought under the Equality Act 2010 instead of under the Disability Act 1995, and to define as respondent "the local authority or the governing body", where the school is maintained, or "the proprietor" where the school is independent.

7.7 The definition of "special educational needs case" is amended to include proceedings concerning a detained person's educational, health and care needs assessment. Rule 19 (leave to bring proceedings) is consequentially amended to add a reference to the Special Educational Needs and Disability (Detained Persons) Regulations 2015 in addition to the existing reference to the Special Educational Needs and Disability Regulations 2014.

7.8 The amendments made by the Regulations make it optional for an appropriate person, parent or young person to obtain a mediation certificate before seeking leave to appeal in special educational needs cases. The rule amendments impose a requirement to get the permission of the Tribunal is needed before an appeal can be brought. The change is consequential to regulation 20(3) of the Special Educational Needs and Disability (Detained Persons) Regulations 2015, which makes provision for detained children and young people equivalent to that of the regulation 34(3) of the Special Educational Needs and Disability Regulations 2014.

Amendment to the Social Entitlement Chamber Rules

7.9 Rules 1, 5, 17, 22 and 23 of, and Schedule 1 to, the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 have been updated to incorporate the changes required by the introduction of direct lodgement. Direct lodgement and mandatory reconsideration were gradually introduced, from 8 April 2013, in respect of all appeals against decisions made by Her Majesty's Revenue and Customs (HMRC). The amendments clarify the new process for tribunal users, that is, which appeals should be lodged directly with the First-tier Tribunal and which should still be lodged with the decision making Department or body. The time limits for such appeals are set out in the revised Schedule 1.

7.10 The amendments limit the application of rule 23 (cases in which the notice of appeal is to be sent to the decision maker) to housing benefit and council tax benefit cases, with all other cases to be covered under rule 22 (which cover the cases in which the notice of appeal is to be sent to the First-tier Tribunal).

7.11 The Amendment Rules make appropriate references to the cases that fall under the Child Trust Funds Act 2004, which requires appeals to be submitted directly to HMRC.

7.12 The amendments include a new appeal right to the First-tier Tribunal against HMRC decisions to recover overpaid support from parents who are enrolled in the Tax-Free Childcare Scheme. The definition of "respondent" has been amended to include parties as defined under the Childcare Payments Act 2014. The amendment makes each of the affected parties under the 2014 Act, other than an appellant, a respondent. The Amendment Rules further provide protection to a respondent other than the decision maker where an appeal is withdrawn.

- ***Consolidation***

7.13 Informally consolidated versions of the 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

8. Consultation outcome

8.1 No public consultation was undertaken on these Rules. However in accordance with paragraph 28(1)(a) of Schedule 5 to the 2007 Act, the Tribunals Procedure Committee has consulted individually with all relevant government departments and stakeholders. This includes the Tribunal Chamber Presidents, legal and policy officials in the, DfE, HMRC, Department of Work and Pensions and Her Majesty's Courts and Tribunals Service.

9. Guidance

9.1 HMCTS produces guidance for all tribunal jurisdictions 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.

9.2. The guidance on the relevant sections of the Justice website will be updated in September 2015 to include information about any changes relating to the rule amendments.

10. Impact

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

10.2 As the impact of the technical changes of this instrument on the First-tier Tribunal and Upper Tribunal is considered to be minimal, a full Impact Assessment has not been prepared.

11. Regulating small business

11.1 The Statutory Instrument does not impact upon small businesses.

12. Monitoring & review

12.1 The impact of any changes to the Tribunal Procedure Rules is constantly monitored by the TPC by way of feedback from tribunals and users.

13. Contact

13.1 Pushkar Kapole, at the Ministry of Justice, can answer any queries about this instrument. Tel: 020 3334 3629 or email: Pushkar.Kapole@Justice.gsi.gov.uk.