EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2017

2017 No. 723 (L. 8)

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.

2. Purpose of the instruments

2.1 The Tribunal Procedure (Amendment) Rules 2017 ("Amendment Rules") make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008, and the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that apply in 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.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 deals with judicial reviews of certain decisions made by the Home Office relating to immigration, asylum and human rights claims.

4.2 The 2007 Act 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. Extent and Territorial Application

5.1 The extent of these instruments is the United Kingdom.

5.2 The territorial application of this instrument is 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 Tribunal Procedure (Upper Tribunal) Rules 2008

7.1 Part 8 of the Policing and Crime Act 2017 creates a monetary penalties regime for breaches of financial sanctions regimes. A person upon whom a monetary penalty is imposed has the right to request a Ministerial review of the decision and the outcome of the Ministerial review can be appealed to the Upper Tribunal.

7.2 The Amendment Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to introduce a procedure for this new right of appeal and make specific provision for this appeal in the definition of interested parties and provisions dealing with case management powers and costs. 2017.

Amendments to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

7.3 Section 68 of the Care Standards Act 2000 created an appeal to the First-tier Tribunal against a refusal by the General Social Care Council to register a person as a social worker in England and Wales. Section 68 originally applied to England and Wales and was amended by the Health and Social Care Act 2012 so that the appeal only applied to Wales in respect of decisions of the Care Council for Wales (the General Social Care Council was abolished and replaced by this body).

7.4 The Regulation and Inspection of Social Care (Wales) Act 2016 repealed section 68 of the Care Standards Act 2000 with effect from 3 April 2017 and created a new regulatory regime.

7.5 Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 provides the time limit for sending an application notice to the First-tier Tribunal. For cases listed in the Schedule for the Rules, the time limit is three months.

7.6 These Amendment Rules amend the Schedule to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 to reflect the legislative changes made by the Regulation and Inspection of Social Care (Wales) Act 2016 by omitting the reference to section 68 of the Care Standards Act 2000. It is not necessary to amend the Schedule to add a reference to the new appeals under the Regulation and Inspection of Social Care (Wales) Act 2016 because the time limits for those appeals are specified in the Act.

Amendment to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules

7.7 The Housing and Planning Act 2016 (“the 2016 Act”) provides for the sale of higher value local authority homes, introduces starter homes and "Pay to Stay" and other measures intended to promote home ownership and boost levels of housebuilding.

7.8 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 by widening the definition of a Residential Property case to reflect the conferral of further jurisdiction by the 2016 Act. New appeals arising from the 2016 Act will be heard by the Property Chamber of the First-tier Tribunal. The amendments enable the Property Chamber of the First-tier Tribunal to hear these appeals under the current Rules that govern practice and procedure for proceedings before the First-tier Tribunal.

Consolidation

7.9 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

8. Consultation outcome

8.1 No public consultation was undertaken on these Rules. However, in accordance with paragraph 28(1) of Schedule 5 to the 2007 Act, the TPC has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders. This includes the Tribunal Chamber Presidents, legal and policy colleagues in the Welsh Government, HM Treasury, Department for Communities and Local Government 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.

10. Impact

10.1 The impact on business, charities or 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.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by 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 tribunal and users. The Ministry of Justice will keep the First-tier Tribunal and Upper Tribunal Chamber Order under review and will consult with the Senior President of Tribunal, senior judiciary and interested stakeholders to determine if any amendments in the future to the current Rules are required.

13. Contact

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