EXPLANATORY MEMORANDUM TO

THE TRIBUNAL PROCEDURE (AMENDMENT) RULES 2024

2024 No. 364

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument ("the Amendment Rules") makes amendments to:

- the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273) ("Tax Chamber Rules"),
- the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) ("General Regulatory Chamber Rules"); and
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013/1169) ("Property Chamber Rules"),

as a consequence of legislative changes which confer further jurisdictions on 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.

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 ("FtT") and the Upper Tribunal ("UT"), 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 UT 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 ("TPC"), and deals with the process of making, and the content of, those rules.

7. Policy background

What is being done and why?

Amendments to the Tax Chamber Rules

7.1 The Economic Crime (Anti-Money Laundering) Levy ("the levy") is an annual charge that will affect organisations who are supervised under the Money Laundering Regulations and whose UK revenue exceeds £10.2 million per year. The levy is legislated for in Part 3 of the Finance Act 2022.

7.2 The levy will be collected by the three anti-money laundering statutory supervisors. These are: the Financial Conduct Authority, His Majesty's Revenue and Customs ("HMRC"), and the Gambling Commission. The Economic Crime (Anti-Money Laundering) Levy Regulations 2022 (as amended by the Economic Crime (Anti-Money Laundering) Levy (Amendment) Regulations 2023), provides a statutory right of appeal to the FtT against certain decisions of the Gambling Commission or HMRC, made in respect of the levy.

7.3 Appeals against decisions of the Gambling Commission in respect of personal or operating gambling licence are currently heard by the General Regulatory Chamber of the FtT. In contrast, appeals against decisions made by HMRC, including levy appeals, are currently heard by the Tax Chamber of the FtT. The intention is for the Tax Chamber of the FtT to hear all levy appeals against the decisions of both the Gambling Commission and HMRC.

7.4 The Amendment Rules amend the definition of "HMRC" as contained in rule 1(1) of the Tax Chamber Rules to include "the Gambling Commission when exercising functions under Part 3 of the Finance Act". The effect of this amendment is to allow the Tax Chamber Rules to also apply to these appeals.

Amendments to the General Regulatory Chamber Rules

7.5 The Government has committed to leaving the environment in a better state than that in which we found it. Biodiversity net gain (BNG) is a way of creating and improving natural habitats. BNG requires developments to have a measurably positive impact on biodiversity, compared to what was there before development.

7.6 In England, BNG is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021 ("the Act")). The Act requires developers of land in England to deliver a 10% gain in biodiversity for each development. Developers will need to have allocated to their developments any offsite habitat enhancement being relied upon to achieve the 10% gain, and any offsite habitat enhancement being relied on will need to be recorded in a new biodiversity gain site register established by regulations under section 100 of the Act. This means each development will result in more or better quality natural habitat than there was before development.

7.7 The Biodiversity Gain Site Register Regulations 2024 ("the Register Regulations") establishes the biodiversity gain site register, operated by Natural England. The Register Regulations provide for applications to register land in the biodiversity gain site register, and for further applications relating to what is recorded on the register. They also provide for applications to remove land from the register. Further, Natural England (as register operator) is able to amend or remove register entries on its own initiative in specified circumstances.

7.8 Appeals are to be made to the FtT against decisions made by the register operator. An applicant may appeal against the register operator's decision to reject an application. An appeal may also be brought by an interested person under regulation 30(5) or (7) of the Register Regulations against the amendment or removal of an entry by the register operator on its own initiative.

7.9 The Amendment Rules amends rule 22 of the General Regulatory Chamber Rules to specify the period by which a notice of appeal, in respect of an appeal under regulation 30(5) or (7) of the Register Regulations 2024 must be submitted to the Tribunal.

Amendments to the Property Chamber Rules

7.10 The Electronic Communications Code ("the Code") is set out in Schedule 3A to the Communications Act 2003 and governs the basis on which electronic communications operators may exercise rights to deploy and maintain digital communications infrastructure on, under and over public and private land. The Code was amended by the Product Security and Telecommunications Infrastructure Act 2022, which inserted a new Part 4ZA to the Code. Part 4ZA makes provision for the court to impose an agreement which allows operators to exercise Code rights in specific conditions, where the occupier or another person with an interest in land has failed to respond to repeated request for Code rights, for the purpose of providing an electronic communications service.

7.11 The Electronic Communications Code (Jurisdiction) Regulations 2017 (as amended by the Electronic Communications Code (Jurisdiction) (Amendment) Regulations 2023) confers jurisdiction for all Code disputes, in relation to England and Wales, on the FtT and the UT.

7.12 The Amendment Rules amend rule 13 (orders for costs, reimbursement of fees and interest on costs) of the Property Chamber Rules so that the existing cost regime applies to all Electronic Communication Code cases (including cases transferred from the UT) heard in the Property Chamber of the FtT.

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 here:[1].

10. Consultation outcome

Consultation on possible changes to the Tax Chamber Rules, the General Regulatory Chamber Rules and the Property Chamber Rules

10.1 In accordance with paragraph 28(1)(a) 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, senior judiciary, the Department for Environment, Food and

[1] https://www.gov.uk/search/all?organisations%5B%5D=tribunal-procedure-committee

Rural Affairs, the Department for Science, Innovation and Technology, HMRC and His Majesty's Courts and Tribunals Service, who agree with the changes made by these Amendment Rules

11. Guidance

11.1 His 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: [2].

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 TPC 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 Cathryn Hannah, Deputy Director for Tribunals, Legal Support, Dispute Resolution and Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under-Secretary of State Lord Christopher Bellamy KC MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

[2] https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about