EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS) (AMENDMENT) ORDER 2026

2026 No. 771

AND

THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER) (AMENDMENT NO. 2) RULES 2026

2026 No. 770 (L. 14)

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. Declaration

2.1 Sarah Sackman, Minister of State for Courts and Legal Services at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Rawfiah Choudry, Deputy Director for Tribunals, Fees and Irregular Migration Policy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nick Peel at the Ministry of Justice can be contacted by email at the following address with any queries regarding this instrument: nick.peel@justice.gov.uk

Part One: Explanation, and context, of the Instruments

4. Overview of the Instruments

What does the legislation do?

The First-tier Tribunal and Upper Tribunals (Chambers) (Amendment) Order 2026 ("the 2026 Chambers Order")

4.1 The 2026 Chambers Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 ("the 2010 Order") to make provision for certain telecommunications disputes arising under Part 2 of the Landlord and Tenant Act 1954 to be allocated to the Property Chamber of the First-tier Tribunal ("the Property Chamber") and where transferred under Tribunal Procedure Rules, the Lands Chamber of the Upper Tribunal ("the Lands Chamber").

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) (Amendment No. 2) Rules 2026 ("the Amendment Rules")

4.2 The Amendment Rules amend the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to extend the Property Chamber's existing power to make costs orders to include proceedings under Part 2 of the Landlord and Tenant Act 1954.

Where does the legislation extend to, and apply?

The 2026 Chambers Order

4.3 The territorial extent of the 2026 Chambers Order (that is, the jurisdiction(s) in which the instrument forms part of the law) is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of the 2026 Chambers Order (that is, where the instrument produces a practical effect) is the same as the application of the instrument to which the 2026 Chambers Order relates. Practically, the amendments that effect the Property Chamber and the Lands Chamber apply to proceedings in England and Wales.

The Amendment Rules

4.5 The territorial extent of the Amendment Rules (that is, the jurisdiction(s) in which the instrument forms part of the law) is England and Wales, Scotland and Northern Ireland.

4.6 The territorial application of the Amendment Rules (that is, where the instrument produces a practical effect) is the same as the application of the instruments to which the amendments relate. Practically, the amendments that effect the Property Chamber apply to proceedings in England and Wales.

5. Policy Context

What is being done and why?

The 2026 Chambers Order

5.1 The Electronic Communications Code ("the Code") (introduced by the Digital Economy Act 2017) is set out in Schedule 3A to the Communications Act 2003 and came into force on 28 December 2017. It replaced the previous code contained in Schedule 2 to the Telecommunications Act 1984. The Code regulates agreements and tenancies between telecoms operators and landowners for rights to install and keep communications apparatus on, under or over land. Any disputes relating to such tenancies are currently heard in the Property Chamber, or where transferred under Tribunal Procedure Rules, the Lands Chamber. However, disputes in relation to tenancies entered into before 28 December 2017, that are "subsisting agreements"[1] and where the main purpose of the agreement is to grant "Code rights"[2] are governed by Part 2 of the Landlord and Tenant Act 1954 and are presently heard in the County Court.

5.2 The Secretary of State for the Department of Science, Innovation and Technology (DSIT) has made the Product Security and Telecommunications Infrastructure Act 2022 (Conferral of Tribunal Jurisdiction under the Landlord and Tenant Act 1954 etc.) Regulations 2026 ("the 2026 Regulations"), which come into force on 31 July 2026

[1] "subsisting agreement" is defined in paragraph 1(4) of Schedule 2 of the Digital Economy Act 2017
[2] "Code rights" is defined in paragraph 3 of Schedule 2 to the Digital Economy Act 2017.

and confer jurisdiction for these pre-2017 tenancies from the County Court to the First-tier Tribunal or the Upper Tribunal.

5.4 The 2026 Chambers Order allocates this new jurisdiction to the Property Chamber, reflecting its existing expertise in handling similar proceedings under the Electronic Communications Code. It also allocates this new jurisdiction to be heard by the Lands Chamber where proceedings are transferred under rule 25 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Property Chamber Rules"). Under that rule, the President of the Property Chamber, with the concurrence of the President of the Lands Chamber, may direct that a case be heard in the Lands Chamber due to (for example) the complexity of the case.

The Amendment Rules

5.5 The Amendment Rules allow for a cost order to be made in respect of proceedings under Part 2 of the Landlord and Tenant Act 1954. If this amendment is not made, the costs position would differ between otherwise analogous proceedings depending upon whether the relevant tenancy commenced before or after the introduction of the Code. Tenancies to which Part 2 of the Landlord and Tenant Act 1954 applies and whose primary purpose is to grant "Code rights" are materially the same as those under Part 5 of the Code, and there would be no clear justification for such divergence. In addition, such proceedings are already subject to costs powers in the courts, and there is no obvious reason why those costs principles should not continue to apply following the transfer of jurisdiction to the tribunal.

6. Legislative and Legal Context

How has the law changed?

The 2026 Chambers Order

6.1 Section 7 of the Tribunals, Courts and Enforcement Act 2007 provides that the Lord Chancellor may, with the concurrence of the Senior President of Tribunals, organise the First-tier Tribunal and Upper Tribunal into Chambers and specify the allocation of functions between these Chambers. The 2010 Order has been made in exercise of that power and it specifies the functions that are allocated to each of the Chambers of the First-tier Tribunal and the Upper Tribunal.

6.3 The 2026 Chambers Order amends articles 5A (functions of the Property Chamber) and 12 (functions of the Lands Chamber) of the 2010 Order, to allocate functions in respect of specified proceedings under Part 2 of the Landlord and Tenant Act 1954. Article 5A is amended to allocate such proceedings to the Property Chamber where they are specified in regulations made under section 63(2A) of the 1954 Act (currently the 2026 Regulations). Article 12 is amended to provide for those proceedings to be dealt with by the Lands Chamber where they are transferred under rule 25 of the Property Chamber Rules.

The Amendment Rules

6.4 The Amendment Rules amend rule 13(1) of the Property Chamber Rules to include proceedings brought under Part 2 of the Landlord and Tenant Act 1954 among the proceedings in respect of which the Tribunal may make an order for costs.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcomes

The 2026 Chambers Order

7.1 In accordance with section 7(9) of the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor with the concurrence of the Senior President of the Tribunals, can allocate specific functions between the different chambers of the First-tier Tribunal and Upper Tribunal.

7.2 The Lord Chancellor has consulted the Senior President of Tribunals who agrees with this allocation. In addition, we have considered the views of the Chamber Presidents of the Property Chamber and the Lands Chamber who are also supportive of the changes made by this Order.

The Amendment Rules

7.3 In accordance with paragraph 28(1)(a) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007, the Tribunal Procedure Committee has consulted such persons as it considers appropriate which includes individually with all relevant government departments and stakeholders. This includes the President of the Property Chamber and the President of the Lands Chamber, the Department for Science, Innovation and Technology, and His Majesty's Courts and Tribunals Service.

8. Applicable Guidance

8.1 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 here[3].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 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.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

The 2026 Chambers Order

10.1 The Ministry of Justice continually keeps the functions of the Tribunals and its constituent Chambers under review.

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

The Amendment Rules

10.2 The Tribunal Procedure Committee approach the monitoring of the impact of changes to the Tribunal Procedure Rules by way of feedback received from the Tribunal, His Majesty's Courts and Tribunals Service and tribunal users.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are no matters of special interest to Parliament.

12. European Convention on Human Rights

12.1 This instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").