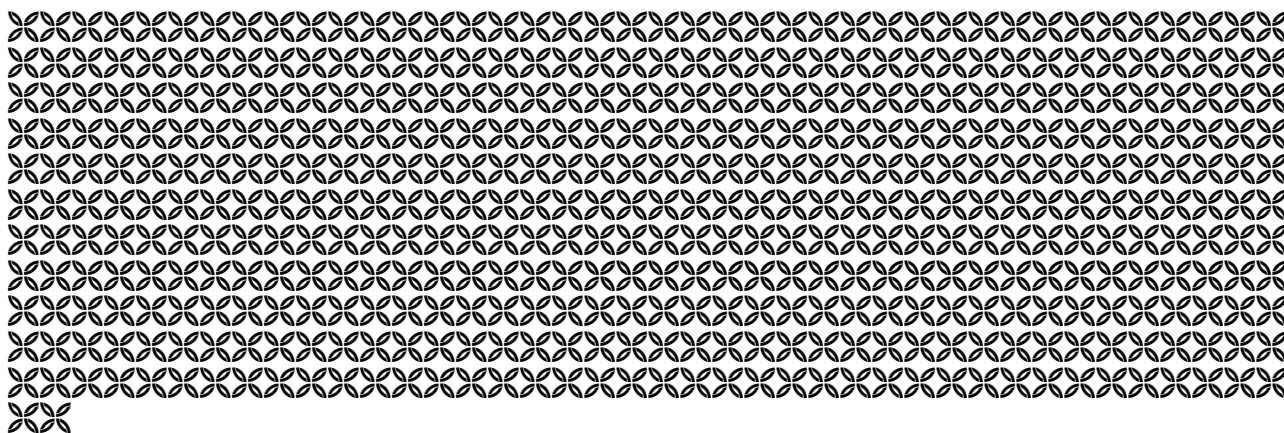


Tribunal Procedure Committee

Report for the year ended 31 December 2013

January 2014



Contents

	Page No.
Foreword	2
Background	4
Terms of Reference	4
Membership	5
Sub-Groups	6
Meetings	7
Consultations	7
New Rules/Statutory Instruments	9
Forthcoming Priorities	11
Further information	12

This report covers the period between April 2012 and December 2013 inclusive.

Foreword by Mr. Justice Langstaff

The TPC plays a vital role in ensuring that justice is delivered. It does so by making the rules which govern procedure within tribunals: the rules are critical in ensuring that justice is achieved. The statutory duty is to ensure this by making the tribunal system accessible, fair, quick and efficient by making simple, and simply expressed, rules.

The period of this report spans 20 months, in order that a perspective can hereafter be given, year by year, beginning each January. That period has been particularly busy, but, as always, interesting.

In addition to keeping all sets of Tribunal Procedure Rules under constant review, the TPC made four amending Statutory Instruments; ran six detailed public consultation exercises; and worked on two major sets of new rules in respect of the First-tier Tribunal.

A major piece of work was formulating rules for the launch of the Property Chamber in July 2013. The Chamber brings together jurisdictions which had previously been separate, though sharing some commonality of subject: Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals, Rent Assessment Committees, Agricultural Land Tribunals and the Adjudicator to Her Majesty's Land Registry. The work had to begin well in time for extensive consultation, and development of the new rules.

Provision had to be made to enable the transfer of judicial review proceedings from the High Court to the Upper Tribunal, following earlier provision to enable the determination of "fresh claim" judicial review applications by a Tribunal rather than by the Administrative Court.

Quite apart from this, the volume of work was as substantial as in previous years, and on occasion subject to considerable time pressures. For example, a quick response was needed to implement a rule change called for by a decision made by the Court of Appeal in respect of decisions in judicial review proceedings before the Immigration and Asylum Chamber of the Upper Tribunal. The Upper Tribunal Rules have been amended UK-wide to allow an application for permission to appeal to the Court of Appeal to be made to the Upper Tribunal immediately at the hearing. Similarly, the TPC quickly introduced consequential amendments to the Upper Tribunal Rules applying in financial services cases to reflect changes made by the Financial Services Act 2012 to the Financial Services and Markets Act 2000. This ensured that some 20 financial services cases that were in hand at the time were able to proceed without any delay.

A key part of the TPC's work is to consider the many new appeal rights and consequential technical amendments, such as nomenclature, brought about by policy and legislative change. This year has been no exception with a significant piece of work, involving Her Majesty's Courts and Tribunals Service and the Department for Work and Pensions, on amendments specific to the Social Entitlement Chamber Rules to reflect the introduction, as part of the welfare reforms, of the mandatory reconsideration of decisions prior to appeal; direct lodgement of appeals at the Tribunal; and consideration of time limits for responses. This work has largely been completed.

There were also almost 40 new appeal rights to consider during the period of this report. The range is eclectic, and may impact on a small section of the general population, but nonetheless requires a consideration which may have to be all the more careful as the subject matter becomes less familiar. Examples of new appeal rights for which the TPC has had to provide include the "Green Deal", Drink Drive Rehabilitation Schemes, Flood and Water Management Act appeals, appeals in respect of Nitrate Vulnerable Zones and the Community Right to Bid. For each new appeal right provided

for by legislation, the TPC considers whether to include questions or issues in government consultation papers, reviews the draft regulations and ultimately considers whether any rule changes are needed and if so, what they are and how they should best be expressed.

I am proud to have led a Committee whose members have shown unwavering commitment and energy. This is all the more remarkable because the job itself carries no remuneration and often involves extensive hours of work of a technical and detailed nature, which (when the call has come) all have unstintingly given often at the cost of their personal convenience or that of their families. That they should be prepared to offer this is in my view the best testament to the value of the work which the TPC does: if it were not of such importance to justice, it is difficult to see why they should volunteer and persevere as they do. I am grateful, too, for the devoted assistance given to the TPC throughout the year by its Secretariat, drawn from within the Ministry of Justice, from policy and legal officials – especially the invaluable work, of high quality and often under significant pressure, done by its inestimable Secretary, Julie McCallen, whose patience has been sorely tested on occasion yet has never failed; and by everyone who has taken the time to respond to the Committee’s public consultation exercises. In particular, I would like to thank those who have given specialist input and expertise from the First-tier and Upper Tribunals, and in particular Siobhan McGrath, Peter Lane and Mungo Deans.

Background

The TPC is classified as an advisory Non Departmental Public Body, sponsored by the Ministry of Justice.

It was established in May 2008 to make rules of procedure for the First-tier Tribunal and the Upper Tribunal. It was set up in accordance with section 22 of the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”).

Under Schedule 5 to the 2007 Act, Tribunal Procedure Rules must be signed by a majority of members and submitted to the Lord Chancellor. Unless they are disallowed by the Lord Chancellor (a power that to date has not been exercised) the rules are contained in a Statutory Instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

Terms of Reference

The TPC exists to make Tribunal Procedure Rules governing the practice and procedure in the First-tier Tribunal and Upper Tribunal. Power to make Tribunal Procedure Rules is exercised under section 22(4) of the 2007 Act with a view to securing:

- (a) that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done,
- (b) that the tribunal system is accessible and fair,
- (c) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,
- (d) that the rules are both simple and simply expressed, and
- (e) that the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

Before the TPC makes Tribunal Procedure Rules, under paragraph 28(1) of Schedule 5 to the 2007 Act it must:

- (a) consult such persons (including such of the Chamber Presidents) as it considers appropriate,
- (b) consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
- (c) meet (unless it is inexpedient to do so).

The TPC also advises the Senior President and Chamber Presidents in relation to Practice Directions under section 23 of the 2007 Act. Paragraph 17 of Schedule 5 provides that rules may refer to provision made or to be made by such directions. The power to give such directions is conferred by section 23 on the Senior President in relation to the practice and procedure of the Upper Tribunal and the First-tier Tribunal, and on Chamber Presidents, with the approval of the Senior President, in relation to the practice and procedure of the relevant chamber. In certain cases the giving of directions requires the approval of the Lord Chancellor. The Senior President has indicated that before giving or approving directions he will consult the TPC.

Membership

The membership of the TPC is governed by Schedule 5 to the 2007 Act. It states that the TPC shall consist of the following members:

- The Senior President of Tribunals or a person nominated by him;
- Four members appointed by the Lord Chancellor, one of whom is nominated by the Administrative Justice and Tribunals Council;
- Three members appointed by the Lord Chief Justice of England and Wales;
- One member appointed by the Lord President of the Court of Session; and
- Up to four additional members, appointed by an appropriate senior judge at the request of the Senior President of Tribunals, with relevant experience in and knowledge of a particular issue or subject area.

As the TPC has been classified as a Non Departmental Public Body, the four appointments made by the Lord Chancellor fall within the remit of the Office of the Commissioner for Public Appointments (OCPA), and recruitment to these posts must comply with the OCPA Code of Practice.

Below is a list of all members as at 1 December 2013.

Name	Appointed by
Mr Justice Brian Langstaff (Chair) Brian Thompson	Senior President of Tribunals Lord Chancellor on the nomination of the Administrative Justice and Tribunals Council
Michael Reed	Lord Chancellor
Philip Brook Smith QC	Lord Chancellor
Simon Cox	Lord Chancellor
Judge Simon Ennals	Lord Chief Justice (England & Wales)
Judge Mark Rowland	Lord Chief Justice (England & Wales)
Lesley Clare	Lord Chief Justice (England & Wales)
Judge Douglas May QC	Lord President of the Court of Session

The appointment of Philip Brook Smith was renewed late in 2013 for a further term, after a (highly) competitive appointment exercise. A similar exercise has recently been brought to near completion since the current terms of office of Michael Reed and Simon Cox, both of whom have served the TPC with distinction, are shortly to come to an end. The Lord Chancellor acceded to a request from the Chairman to stagger the timing of his three re-appointments so that the TPC did not suffer the loss of developed expertise at a critical moment in the development of new rules: for this the Committee was grateful, since it has enabled the business to continue to be conducted fluently and effectively, whilst ensuring that “new blood” has a proper opportunity to gain appointment to its number.

During the period of this report, the TPC was also attended by the following judiciary in particular:

- Siobhan McGrath of the Residential Property Tribunal Service, and the Chamber President Designate of the First-tier Tribunal Property Chamber;
- Peter Lane of the Upper Tribunal Immigration and Asylum Chamber; and
- Mungo Deans of the First-tier Tribunal Immigration and Asylum Chamber.

Bronwyn McKenna's term of office as nominee of the Administrative Justice and Tribunals Council came to an end during the period of this report: the Committee is grateful to her for all her hard work, and gentle wisdom.

Sub-groups

The Upper Tribunal and the First-tier Tribunal are made up of four and seven chambers respectively. These chambers cover a wide variety of jurisdictions and in order to address the diverse range of subject matter, and to bring in individuals with specialist knowledge, four standing sub-groups were established in December 2010. In 2012 a fifth standing sub-group was added, to deal with Costs issues.

A working group was established for the temporary purpose of dealing with the new Property Chamber Rules 2013 and the consequential amendments required to the Upper Tribunal (Land Chamber) Rules 2010.

The sub-groups are responsible for progressing particular areas of work in between the main committee meetings, and for monitoring potential new appeal rights and/or rule changes relevant to their areas. This involves reviewing material from policy teams within the Ministry of Justice, other government departments, and elsewhere; considering what needs to be put before the main TPC, along with the sub-group's comments and recommendations, and taking matters forward after the committee meetings.

Each sub-group also has judicial and other advisory members whose expertise in particular areas can be drawn on when needed and who can ensure that there is speedy and accurate flow of information between the TPC, the judiciary, administrators and those with policy responsibilities. The sub-groups hold meetings as and when needed.

The TPC Sub-groups are:

HSW Sub-group: This sub-group covers work relating to the Health, Education and Social Care Chamber (HESC), the Social Entitlement Chamber (SEC), the War Pensions and Armed Forces Compensation Chamber (WPAFCC), and the Upper Tribunal Administrative Appeals Chamber (except as regards General Regulatory Chamber appeals). It is led by Judge Mark Rowland.

GTCL Sub-group: This sub-group covers work relating to the General Regulatory Chamber (GRC), the Tax Chamber, Upper Tribunal Administrative Appeals Chamber (as regards GRC Appeals), Upper Tribunal Tax & Chancery Chamber, and Upper Tribunal Lands Chamber. It is led by Philip Brook Smith.

IAC Sub-group: This sub-group covers work relating to the First-tier Tribunal Immigration and Asylum Chamber, and the Upper Tribunal Immigration and Asylum Chamber. It is led by Michael Reed.

Costs Sub-group: This sub-group has responsibility for consideration of the issues and recommendations arising from the report '*Costs in Tribunals*'¹ prepared for the Senior President of Tribunals in 2011 by the Costs Review Group. The Costs Sub-Group is led by Simon Cox.

Overview Sub-group: This sub-group covers proposed rule changes which affect more than one of the other sub-groups. It consists of the TPC Chair, the Chairs of the other sub groups, with advisory members. It also holds quarterly Overview Sub-Group Planning Meetings, the purpose of which is to enable the sub-group to make recommendations to the main Committee as to its programme of work. These meetings are attended in an advisory capacity by senior officials.

Meetings

Full TPC meetings are usually held every four or five weeks; with nine per annum on average. For the period covered by this report there were 14 full Committee meetings.

Consultations

As part of its process for developing new rules, and keeping existing rules under review, the TPC consults with any individuals and groups it considers appropriate. Consultations are posted on the TPC's page on the Ministry of Justice website² and stakeholders alerted. Wherever possible, 12-weeks are allowed for receipt of responses.

The TPC sees effective consultation as a fundamental part of its role and recognises that those involved in the day-to-day practice or procedure of tribunals are often best placed to give a view on the impact of proposed change. Therefore all responses received are considered carefully and are used to inform the development of new and amended rules.

The TPC is guided by the following principles derived from its statutory remit and asks respondents to consider them when replying:

- to make the rules as simple and streamlined as possible;
- to avoid unnecessarily technical language;
- to enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and
- to adopt common rules across tribunals wherever possible, so that rules specific to a chamber or a tribunal are permitted only where there is a clear and demonstrated need for them.

During 2012/3, the TPC ran six public consultations:

1. Between 26 March and 15 June 2012 it consulted on amendments to the **Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008**. The consultation sought views on whether appeals against most social security and child support decisions should be lodged direct with the tribunal, rather than the decision-maker, and that decision-makers should be required to respond to appeals within a specified time.

¹ <http://www.judiciary.gov.uk/publications-and-reports/reports/Tribunals/costs-in-tribunals-report-december-2011>

² <http://www.justice.gov.uk/about/tribunal-procedure-committee>

2. Before the new **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** were made, draft rules were consulted on between June and August 2012. These rules have been used by the Property Chamber with effect from July 2013.
3. This was followed shortly afterwards in September 2012 by a three month consultation on the proposed consequential amendments to the **Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010**. This sought views on the proposed changes to accommodate appeals and transfers from the First-tier Tribunal Property Chamber. The consultation also included costs issues in the Lands Chamber which had been highlighted in the '*Costs in Tribunals*' report.
4. To give effect to the Crime and Courts Act 2013, in summer 2013 it consulted on amendments to the **Tribunal Procedure (Upper Tribunal) Rules 2008** to transfer a wider range of Immigration & Asylum Judicial Reviews from the High Court to the Upper Tribunal, Immigration and Asylum Chamber. These rules came into force on 1 November 2013.
5. In May 2013, it consulted on proposed new **First-tier Tribunal (Immigration and Asylum Chamber) procedure rules**. The proposed changes were part of the work to harmonise tribunal rules across the different Chambers. The work on these new rules is ongoing. It should be emphasised that these rules do not attempt to alter the substantive law relating to immigration and asylum, but seek to adjust the procedures by which appeals are determined in the light of experience (of the current rules, which pre-date the formation of the TPC) and of principle.
6. Following that, during 18 June and 10 September it consulted on amendment to **rule 34 of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008** (medical examination of the patient in mental health cases). It sought views on the changes to ensure that Mental Health Tribunals will have the power to review and commission medical evidence in the most appropriate way for each case; sparing vulnerable people going through unnecessary assessments, and ensuring greater flexibility in the system. This proposal is still in progress.

Not all of the proposed rule amendments are subject to formal public consultation. Where the changes to be made are technical, such as in nomenclature, or are minor in nature, the TPC instead consults informally; contacting relevant stakeholders directly. These include relevant judiciary in both the First-tier and Upper Tribunals, including Chamber Presidents, the Senior President of Tribunals, the President of the Court of Session, operational colleagues in Her Majesty's Courts and Tribunals Service, and both policy colleagues and lawyers from other government departments.

During the summer and autumn of 2012 such informal consultations were conducted for miscellaneous minor amendments to resolve some practical difficulties affecting many of the Chambers, and also on some minor amendments relating to costs following recommendations made in the '*Costs in Tribunals*' report. The TPC also engaged with lawyers and officials in HM Treasury on specific consequential amendments required to the Upper Tribunal Rules to reflect changes made by the Financial Services Act 2012.

The TPC will also occasionally include questions in other policy consultation papers; for example those of government departments relating to new appeal rights. This is where it would be useful to ask for views on amendments to rules that might be required as a result of implementation of the

proposed new policy. Questions of this kind were included during 2012/13 in government consultations for proposed changes to secondary legislation for the Copyright (Regulation or relevant licensing bodies) Regulations 2014, Amendments to UK greenhouse gas emissions trading scheme and national emissions inventory regulations; amendments to the Environmental Permitting (England and Wales) Regulations 2010 and the proposed Regulations (Prohibition on participation in management) (England).

Following the end of the consultation the other government department will provide a summary of responses to the TPC with a list of those responding. The TPC will use this information to decide whether any rule-changes are required to accommodate the new appeal right.

New Rules/Statutory Instruments

During the period of this report, the TPC introduced a new set of rules for the Property Chamber, and six amending Statutory Instruments (SIs). A brief description is given for each, and more information can be found from the Explanatory Memoranda accompanying them.

1. The Tribunal Procedure (Amendment No. 2) Rules 2012 – SI 2012/1363

This SI was made in May 2012 and had two commencement dates (of 1 July and 1 September 2012).

The Tribunal Procedure (Upper Tribunal) Rules 2008 were amended from July to reflect new provisions governing the licensing of operators of goods vehicles in Northern Ireland under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.

It also amended, from September, the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 to allow for provisions of the Education Act 2011 that enabled the First-tier Tribunal to hear disability discrimination claims relating to permanent exclusion of pupils from schools. The rule amendments reduced the time in which a respondent must provide its response, and allowed for the introduction, in England, of Independent Review Panels.

2. The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2012 – SI 2012/2890

This SI was made in November 2012 and came into force on 11 December 2012. It made changes to the Tribunal Procedure (Upper Tribunal) Rules 2008 that were deemed necessary by the Court of Appeal in relation to judicial review proceedings before the Immigration and Asylum Chamber of the Upper Tribunal. The amendments permit an application for permission to appeal to the Court of Appeal to be made to the Upper Tribunal immediately at a hearing, once the Tribunal has given its decision orally, rather than having to wait for written reasons to be provided.

3. The Tribunal Procedure (Amendment) Rules 2013 – SI 2013/477

This SI was made in February 2013 and came into force on 1 April 2013. Amendments were made to five sets of rules applying in the First-tier Tribunal and to the Tribunal Procedure (Upper Tribunal) Rules 2008. They dealt with practical issues that had been drawn to the TPC's attention covering decisions made on preliminary issues; time limits for appeals against interlocutory decisions; the withdrawal of cases adjourned part-heard; and the time for applying for costs after a withdrawal.

It also made miscellaneous minor amendments relating to costs that had been contained in the ‘*Costs in Tribunals*’ report. These included a power to order interim payments; that detailed assessments should include the costs of the assessment; and that wasted costs orders includes the costs of the application for the wasted costs order.

Finally, the SI also contained the amendments specific to the Social Entitlement Chamber to reflect the introduction of mandatory reconsideration of decisions prior to appeal; direct lodgement of appeals at the Tribunal; and time limits for responses.

4. The Tribunal Procedure (Amendment No. 2) Rules 2013 – SI 2013/606

This SI was made in March 2013 and also came into force on 1 April 2013. It made changes to the Tribunal Procedure (Upper Tribunal) Rules 2008 applying in financial services cases; consequential to the Financial Services Act 2012. The regulatory responsibility in the financial services sector was split between three regulators and the rule amendments were to refer to the new regulators and to replace references to the Financial Services Authority which from April became known as the Financial Conduct Authority. Furthermore, as some financial services firms are now to be regulated by two, or possibly all three, the rules now allow for multi-regulator cases. Finally, some minor changes to terminology and grammar were made.

5. Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

The Property Chamber was launched on 1 July 2013. It is the seventh Chamber of the First-tier Tribunal. Its function is to provide an improved service through the development of more coherent and consistent procedures across the jurisdictions that are transferring into the Chamber. The rules accommodated applications, appeals and references presently determined by the following source jurisdictions which were transferred in to the First-tier Tribunal from 1 July 2013:

- tribunals or committees previously known as the Residential Property Tribunal Service (comprising Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals and Rent Assessment Committees);
- Agricultural Land Tribunals; and
- the Adjudicator to Her Majesty’s Land Registry.

6. The Tribunal Procedure (Amendment No. 3) Rules 2013 – SI 2013/1188

This SI was made in May 2013 and came into force on 1 July 2013. It made amendments to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. These were consequential amendments required to the Upper Tribunal Lands Chamber Rules to allow appeals to the Lands Chamber from cases heard in the newly formed Property Chamber.

7. The Tribunal Procedure (Amendment No. 4) Rules 2013 –SI 2013/2067

This SI was made in August 2013 and came into force on 1 November 2013. It made changes to the Tribunal Procedure (Upper Tribunal) Rules 2008 as a consequence of the transfer of certain immigration and asylum judicial reviews from the High Court to the Upper Tribunal; the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 to deal with some practical issues raised by Her Majesty’s Courts and Tribunals Services (HMCTS); and the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 to correct a cross-reference error.

Forthcoming Priorities

The coming year will be just as busy; the TPC already has a full work programme covering the next 18 months.

In the spring of 2014 a revised set of rules is set to be introduced to the First-tier Immigration and Asylum Chamber: the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. The TPC conducted a three month consultation exercise to seek views on the proposed new rules. The consultation also sought views on whether the Tribunal Procedure (Upper Tribunal) Rules 2008 will require any consequential amendments. The new rules will replace the existing Asylum and Immigration (Procedure) Rules 2005. When the Immigration and Asylum Chambers of both the First-tier and the Upper Tribunals were established in 2010, the existing Asylum and Immigration (Procedure) Rules 2005 were ordered to have effect and only necessary amendments for the transfer of work to the new chambers were made: they have thus never been subject to the detailed scrutiny of the TPC until now.

A further, continuing, priority for the TPC will be responding to the '*Costs in Tribunals*' report through considering, consulting and introducing appropriate rule amendments in both the First-tier and the Upper Tribunals. Some changes have already been made in our recent amending SIs. But other recommendations will need further review by the Costs Sub-group, and consultation, before being taken forward.

In addition to making and amending the Tribunal Procedure Rules, the TPC will continue to keep all nine major sets of rules under constant review to identify and address any practical difficulties with their operation. And of course it will continue to keep abreast of, consider and respond to new appeal rights and to any more technical amendments, such as those to nomenclature, brought about by the work of various government departments and by legislative change.

Further Information

Further information about the work of the TPC can be obtained from the committee secretariat as follows:

Secretary to the Tribunal Procedure Committee

Post Point 4.38

102 Petty France

London

SW1H 9AJ

Email: tpcsecretariat@justice.gsi.gov.uk

The TPC's page on the Ministry of Justice website can be found at:

www.justice.gov.uk/about/tribunal-procedure-committee

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