

THE TRIBUNAL PROCEDURE COMMITTEE **(TPC) Guidance Document**

TRIBUNAL PROCEDURE COMMITTEE

The Tribunal Procedure Committee (the “TPC”) is an advisory Non-Departmental Public Body which is 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 (TCEA). 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.

The introduction of the Judicial Review and Courts Act 2022 transferred responsibility for Employment Tribunal procedure rules to the TPC and the transfer is expected to take place on or before 30 April 2024. The provisions relating to the EAT transfer of responsibility have not yet been brought into force. The TPC has been told, however, that the government intends to bring them into force in due course.

TPC PURPOSE AND PROCEDURE

The TPC has nine sets of Tribunal Procedural Rules that it keeps constantly under review. Paragraph 22(4) of Schedule 5 to the TCEA states that power to make Tribunal Procedure Rules is to be exercised with a view to securing that:

- in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done;
- the tribunal system is accessible and fair;
- proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently;
- the rules are both simple and simply expressed; and
- 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.

Paragraph 28(1) of Schedule 5 to the TCEA states that before the TPC makes Rules, the Committee must:

- consult such persons (including the Chamber Presidents) as it considers appropriate;
- consult the Lord President of the Court of Session if the rules contain provisions relating to proceedings in Scotland; and
- meet (unless it is inexpedient to do so).

Paragraph 28(2) of Schedule 5 to the TCEA states that rules made by the TPC must be:

- signed by a majority of the members of the Committee; and
- submitted to the Lord Chancellor, who may allow or disallow the rules.

The TPC also advises the Senior President of Tribunals and Chamber Presidents in relation to directions (commonly known as Practice Directions) under Section 23 of the TCEA.

Paragraph 17 of Schedule 5 to the TCEA provides that rules made by the TPC may refer to provisions made or to be made by such directions. The power to give such directions is conferred by Section 23 of the TCEA 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;
- Three members appointed by the Lord/Lady 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.

Details for the TPC membership can be found here:

<https://www.gov.uk/government/organisations/tribunal-procedure-committee/about#membership>

THE WORK OF THE TPC

The TPC is responsible for the following sets of rules:

1. The Tribunal Procedure (Upper Tribunal) Rules 2008
2. The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010
3. The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008
4. The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008
5. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008
6. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
7. The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009
8. Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
9. Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

TPC CONSULTATIONS

Consultation is a fundamental part of the rule-making process and the TPC has a statutory obligation to consult pursuant to the TCEA. Those people involved in the day-to-day work of particular tribunals are often best placed to assess the potential impact of rule changes. The TPC has benefited considerably from the responses to its consultations; they have helped eradicate errors, identify problems in the initial drafts, and suggested improvements. Even where proposed amendments to the rules have not been adopted, they have frequently generated important debates in the TPC which have helped sharpen the drafting process.

Specific subject areas may be discussed at sub-group meetings in the periods between full meetings. Matters such as deciding to consult on a proposal, agreeing a consultation document, agreeing a consultation response, and agreeing to make rules will be made by the TPC. It is not unusual for any one of those matters to be discussed over the course of multiple meetings. The result of this is that the whole process from receipt of a proposal to amended or new Rules being made can take several additional months both before and after the consultation.

CONFIDENTIALITY AND DATA PROTECTION

In general, the TPC regards consultation responses received by respondents as public documents. The response may be published by the TPC and referred to in its formal "Reply" to the Consultation.

If you would prefer your response to be kept confidential, you should be aware that information you provide, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 and the Data Protection Act 1998. In view of this, it would be helpful if you could explain to the TPC why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the TPC.

TPC PROCESS AND PROCEDURES

The TPC usually meets 9 times a year (i.e., monthly except in January, August, and September) and meetings take place on the first Thursday of each month.

For rule change proposals to be considered by the TPC, a briefing note should be submitted to the TPC secretariat a minimum of 10 working days before the next scheduled TPC meeting. Please note, documents detailing rule change proposals or briefing notes submitted after this deadline/ cut-off point will usually be deferred to the next scheduled meeting for the TPC's consideration.

The anticipated timeframe for rule changes is generally a maximum of 12 months from start to finish of receipt of a briefing paper, although this timeframe may vary depending on TPC work priorities. During the initial investigatory stage, the TPC may ask for additional information from affected stakeholders about the key policy and strategic drivers and the

likely impacts of proposed rules changes. The TPC scrutinises all evidence made available to it, including statistical data, before deciding whether it will proceed to consult on making rule changes.

A public consultation exercise will usually run for 12 weeks, and all responses are taken into account for the purpose of informing the progress of the rulemaking exercise. The TPC will not consider informal observations made to it which are not intended as consultation responses. Once a consultation exercise has concluded, the TPC proceeds to prepare a consultation response, identifying all respondents and setting out its recommendations for rule changes, or its decision that no rule changes are required, in light of the comments received.

STATUTORY INSTRUMENTS PROCESS IN PARLIAMENT

The TPC Secretariat endeavour to follow the standard Government practice of a bi-annual statutory instrument (SI) process for legislative changes to come into effect, i.e., the calendar months of April and October are chosen to lay an SI. However, the nature of the TPC's work is such that this is not always practicable. The TPC has due regard to the public sector equality duty contained in Section 149 of the Equality Act 2010 when making rules. SIs drafted by the TPC are subject to the negative resolution process before Parliament.

CONTACTING THE TPC

The Secretariat is responsible for supporting the work of the TPC and acting as the interface between the TPC and officials. The current secretariat staff are Vijay Parkash, Hanna Polanszky and Amir Khandoker.

Vijay Parkash is the TPC Secretary, email: tpcsecretariat@justice.gov.uk and can be contacted in the first instance with any queries regarding the work of the TPC.