

New appeal rights or changes to functions of the tribunal

Purpose

1. To provide guidance to policy officers, both within the Ministry of Justice and other Government Departments, about their responsibility to bring matters to the attention of the Tribunal Procedure Committee (TPC) in respect of any consideration of proposals that would:

- create new rights of appeal, applications, references or other proceedings before the Employment Tribunals, First-tier Tribunal and Upper Tribunal;
- change existing rights of appeal, applications, references or other proceedings before those tribunals; or
- change functions of a body whose decisions may be challenged before those tribunals,

so as to ensure that the TPC can fulfil its statutory obligations and that any procedural implications are identified at an early stage and reflected in implementation planning.

Statutory Obligations

2. The TPC was created by the Tribunals, Courts and Enforcement Act 2007 and is responsible for making rules that govern the practice and procedure to be followed in proceedings before the Employment Tribunals, the First-tier Tribunal and Upper Tribunal.

The TPC must exercise its rule-making powers with a view to securing that:

- (a) justice is done;
- (b) the tribunal system is accessible and fair;
- (c) proceedings are handled quickly and efficiently;
- (d) rules are both simple and simply expressed; and
- (e) rules where appropriate confer on tribunal members responsibility for ensuring that proceedings are handled quickly and efficiently.

3. Before exercising its rule-making powers the TPC must comply with its statutory consultation requirements, which include consulting certain members of the judiciary and such persons as the TPC consider appropriate.

Timing

4. It usually takes **twelve to fifteen months from a proposal for change to the making of new Procedure Rules**. The process includes:

- initial consideration;
- a TPC issued consultation as necessary (usually open for 12 weeks);

- drafting and agreeing a TPC response to consultation, including agreeing any changes to the proposal;
- drafting and legal checks;
- Ministerial sign off by the Lord Chancellor (not during summer recess)

5. The TPC normally makes two statutory instruments a year. We aim for these to be made and laid before Parliament in April and October each year. Any amendments to Tribunal Procedure Rules need to be finalised **at least 8 weeks** before the statutory instruments are made.

6. Proposals for changes to Procedure Rules and any other policy or operational changes which may affect procedure in the Employment Tribunals, First-tier Tribunal and Upper Tribunal, should be raised with the TPC Secretariat at the earliest opportunity. When possible, policy officials should informally seek views from the policy team with responsibility for the relevant jurisdictions of the Employment Tribunals, First-tier Tribunal and Upper Tribunal. The TPC Secretariat can provide the appropriate contact details.

Writing a paper for the TPC

7. The TPC Secretariat will assess whether an issue is suitable to raise with the TPC Chair, who will consider whether the issue warrants full committee discussion. The Chair will consider any proposal in light of the TPC's statutory obligations as set out above.

8. If the issue is suitable for consideration, the relevant policy official will be asked by the TPC Secretariat to prepare a paper setting out the issues. Proposals are usually delegated to be considered in specialist subgroups within the TPC. It may be helpful for policy officials to discuss proposals with the chairs of subgroups and Chamber Presidents before a paper goes to the full TPC. The Chair (via the Secretariat) can provide the relevant contact details.

9. The TPC meets monthly, usually on the first Monday of the month, not including January and August. Any proposal for change must be sent to the TPC **at least two weeks before the meeting date**. This is to allow members, who all have other commitments, to read and engage with proposals before the meeting. It is important to have contacted the Secretariat well before this deadline so that there is time to prepare a properly worked up proposal.

Any proposal for consideration for the TPC must include the following information:

- Purpose
- Background
- Current provisions
- Proposals being made (including any proposed draft rules)
- Rationale
- Impact (including on whom; or other rules and any need for transitional provisions)

- Resulting benefits (to whom and quantified where possible)
- Any consultation (stakeholders consulted to date such as Chamber President)
- The impact and risks if the rule change is not made
- Timing envisaged

10. This ensures the TPC can consider a proposal without having seek further information from a proposer. Putting forward an existing paper without such detail may risk delay.

A template paper is attached as **Annex A**.

Consultation

7. A TPC consultation will usually be required and conducted under relevant consultation principles. This means that as well as the actual duration of the consultation exercise itself, any plans must factor in enough time for:

(a) Setting clear objectives for the TPC consultation.

The Secretariat will request a position paper from the sponsoring department setting out what rule changes are being requested. The paper will be tabled at the first available TPC meeting after submission. The matter will usually take at least 2 to 3 meetings before the TPC sign off a paper setting out the clear objectives for the consultation.

(b) Planning consultation activities and identifying stakeholders.

The Secretariat has a stakeholder list. The Secretariat will ask the government department and judiciary to identify and provide any additional stakeholders they consider need to be consulted.

(c) Carrying out any preliminary, informal consultation to inform the exercise (both in terms of content and practicalities, e.g. how best to reach people).

(d) Writing the consultation document and associated documents (usually around one calendar month) **(NB TPC rules consultations rely on Departmental impact assessments and the TPC secretariat should be informed immediately in the event of any problems).**

(e) Getting clearance to publish the consultation document (usually 10 working days from receipt of the final approved consultation document).

(f) Analysing responses to the consultation and incorporating any appropriate changes into the policy proposal (usually around one or two calendar months).

(g) Giving feedback, including through a report of the consultation, summarising the responses received (usually around one calendar month).

8. On the part of the TPC there will be close liaison to inform policy officials of the TPC's likely timetable and of the outcome of TPC discussions as the matter progresses.

9. Sometimes it may be possible to include appropriate questions on rules as part of the Departmental policy consultation. Departments should discuss the logistics with the TPC Secretariat. A question in the Departmental policy consultation as to rules may reduce the need for a TPC consultation exercise, but this cannot be guaranteed.

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