



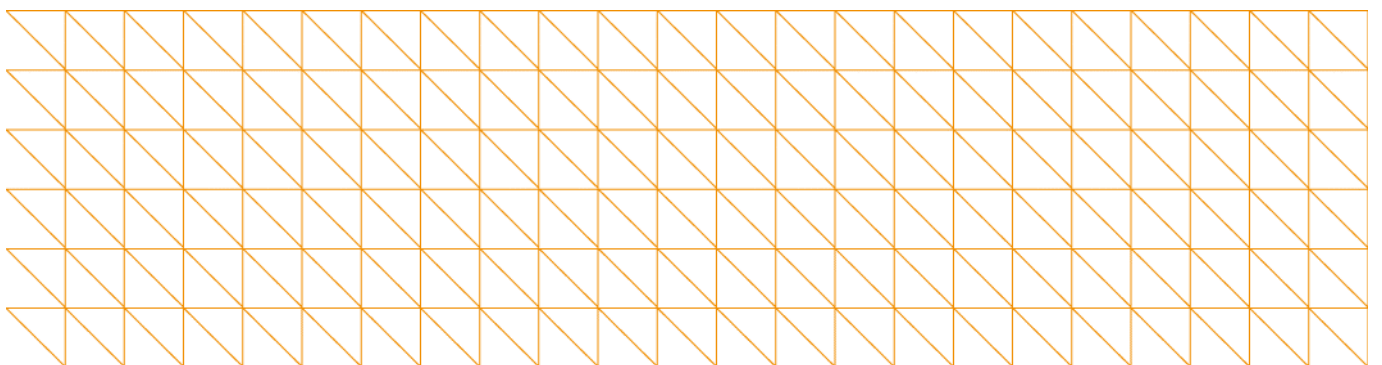
Ministry of
JUSTICE

Draft Charity Tribunal Rules 2008

Response to Consultation

CP(R) 19/07

15 August 2007





Ministry of
JUSTICE

Draft Charity Tribunal Rules 2008

Response to consultation carried out by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Introduction

This document is the post-consultation report for the consultation paper, 'The Draft Charity Tribunal Rules 2008' (the "Rules").

It will cover:

- the background to the consultation exercise;
- a summary of the responses to the consultation exercise;
- a detailed response to the specific questions raised in the consultation paper; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting Jenny Patterson at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from ctconsultation@tribunals.gsi.gov.uk

Background

The consultation paper 'The Draft Charity Tribunal Rules' was published on 15 August 2007. It invited comments on the draft Rules for the procedure to be adopted by the Charity Tribunal (the "Tribunal").

Charities Act 2006

The Charities Bill received Royal Assent on 7 November 2006 to become the Charities Act 2006 (the "Act"). Section 8 of the Act inserts a new section 2A into the Charities Act 1993 ("the 1993 Act") which establishes the Tribunal, and a new Schedule 1B which contains more detailed provision about the constitution and other similar matters of the Tribunal. The Act also inserts a new section 2B into the 1993 Act to allow the Lord Chancellor to make rules to regulate the exercise of rights to take proceedings and for the practice and procedure of the Tribunal.

Section 2A of the 1993 Act also provides that the Tribunal will have jurisdiction to hear matters brought to it under three different types of procedure: appeals, reviews, and references. The Tribunal will be able to hear appeals and reviews of certain decisions of the Charity Commission ("the Commission"), as set out in Schedule 1C to the 1993 Act. The Attorney General or the Commission (with the consent of the Attorney General) will be able to refer questions relating to charity law to the Tribunal in accordance with Schedule 1D to the 1993 Act.

The Rules put in place the practice and procedure to be followed in proceedings before the Tribunal. They are divided into six parts, dealing with introductory provisions, general matters before the Tribunal, initiating an appeal or application, provisions relating to the hearings, appeals from the Tribunal, and special provisions for references.

Impact

The Office of the Third Sector developed a Regulatory Impact Assessment that considered the impacts, risk and benefits of the policy behind the Act and the Tribunal.

The Rules provide the framework within which the Tribunal works and is administered. The Rules alone do not have any impact on business, charities or voluntary bodies and, therefore, an additional Impact Assessment was not prepared.

Summary of responses

A total of 23 responses to the consultation paper were received. Most took the form of discussion papers that addressed specific proposals in the draft Rules. The responses came from a range of interested parties, including academics (3) and others with experience of charities (7), public bodies (4), firms of solicitors (6) and various other organisations (3).

The consultation period closed on 7 November 2007. This report summarises the main responses to the consultation paper, where appropriate explaining how certain issues raised have influenced the final shape of the Rules.

The specific concerns raised in the responses covered:

- rule 3, (now rule 17, "Appeal notice");
- rule 7, (now rule 15, "Exceptions to disclosure");
- rule 31,(now rule 5, "Powers of Tribunal to strike out");
- time scales with reference to rule 3; rule 14 (now rule 22 "Intervention by Attorney General"); and rule 27 (now rule 35, "Permission to appeal to the High Court"); and
- Part 6, ("Special provisions for references").

Other responses relating to technical and drafting points aimed to ensure that the Rules were streamlined in order to allow a clear framework to govern the Tribunal's practices and procedures.

A list of respondents is at Annex A.

Responses to the draft Rules of Procedure

Draft rule two

Interpretation

This rule sets out the definition of certain words that appear in the Rules.

As a result of conducting a decision review, the Commission will make what is called a “final decision” on a case. Only final decisions can be the subject of Tribunal appeals, so undertaking a decision review is usually a prerequisite to embarking on Tribunal proceedings.

In rule 2, two respondents suggested that the *“draft Rules blur the distinction between a decision of the Commission and a final decision of the Commission”*.

One respondent suggested that the proposed definition of “Commission’s decisions” should be removed and that the definition of “Commission’s decision” should be amended to read as follows:

“Commission’s final decision” means the definitive decision of the Commission that is the subject matter of the appeal or application”.

To ensure that a clear distinction is made between a decision of the Commission and a final decision, the term Commission’s “final decision” is used throughout the Rules, and the definition of Commission’s “final decision” was amended as suggested by the respondent.

Statement of case

The term “statement of case” has been changed to “response” throughout the Rules. We felt that this term better reflected the nature of the document filed by a decision-maker in such proceedings.

Draft rule three

Now rule 17 “Appeal notice”

This rule sets out how a person, dissatisfied with a decision of the Commission, may bring an appeal or an application to the Tribunal. It sets out the procedure for an appellant to make an application to the Tribunal in writing by way of a written notice and details the information the appellant should include in this notice. It sets out the procedure for the Tribunal to follow upon receipt of a written notice, including acknowledging the notice and recording it in its register. There is a provision for the appellant to apply to the Tribunal for the time limit for bringing an appeal or application to be extended.

Draft rule 3(3)(a)

Now rule 17(3)(a)

Six respondents mentioned that the Rules should make it possible for a potential appellant to identify clearly when the period for filing a written notice starts to run. For instance, 3(3)(a) did not provide that once the Commission has notified the person(s), the period for filing a notice should start from receipt of that notification.

The rule now states that the period for filing a written notice should start from receipt of notification of the Commission's final decision.

Draft rule 3(3)(a) was also amended to make clear that paragraph (a) only applies to the person forming the subject of the Commission's final decision and not to all those who are capable of being parties to an appeal.

Draft rule 3(3)(b)

Now rule 17(3)(b)

Some respondents considered that as originally drafted this rule appeared to penalise a person who expected to get written receipt of the Commission's decision, by implying that they should check the Commission's website for it. New rule 17(3)(b) clarifies that this applies only to those who are not subject to the final decision.

With further reference to draft rule 3, one respondent mentioned that provisions made by draft rule 31 (now rule 5, "Power to strike out etc."), allows the Tribunal to strike out any appeal notice etc on the ground that it discloses no reasonable grounds for bringing an application. The respondent felt that there was an "*element of unfairness about this as it imports a reasonableness requirement that should be spelt out, and required to be met, at the beginning of the process;*" i.e. provisions should be inserted into draft rule 3 (now rule 17).

We considered that it would be confusing to ask the potential appellant to explain why their grounds are reasonable and as such should not be struck out. The appellant is requested to state their grounds in the appeal notice, which means that the Tribunal can decide whether or not the grounds stated therein are reasonable. Also draft rule 31 gave the appellant the opportunity to make representations before an order against them was made which should provide them with an opportunity to explain their reasons for appealing.

Therefore the suggested provision was not drafted into the Rules.

Draft rule four

Now rule 18 “Commission’s response”

This rule provides for the Commission to send a written statement (“Commission’s response”) in support of the decision which is being appealed to the Tribunal. It states the time limit for the Commission to send its response. It sets out the information the Commission should include in its response, such as all the factors that the Commission relied upon in support of its decision and the statutory provisions under which the relevant action was taken, together with reasons for that decision.

One respondent suggested that *“decisions made by the Commission (subject to appeal/review) will also include issues of law and that it would perhaps be appropriate to require the Commission to make a statement of the relevant law and provide a list of the relevant authorities”*.

The rule was not amended as there is already provision for this in the rule. The reasons for the Commission’s final decision will include the relevant issues of law and the list of documents it provides to accompany its case will include any relevant authorities.

It was further suggested that this rule should be modified so that the Commission is required to provide a list of documents considered or relied on by the Commission in reaching its final decision. This is related to the idea that the appeal takes the form of a rehearing so that the Tribunal will at least need the documents the Commission had when it made its decision.

Provision was made to include this request in rule 4(4)(a)(i) (now rule 18(4)(a)(i)).

Draft rule seven

Now rule 15 “Exceptions to disclosure”

Under this rule a party may seek permission from the Tribunal not to include any document on the list of material that is to accompany the Commission’s response, or the appellant’s reply to that response, or any further information that is provided by the Commission by way of secondary disclosure. A party seeking such permission may apply to the Tribunal stating the grounds on which he relies, for example, that the disclosure of the document would not be in the public interest.

Two respondents suggested that national security considerations should be one of the grounds on which a document should not be disclosed by the Tribunal (for example, where a case involves allegations of terrorist financing by a charity) and that this should be provided for in the Rules.

Rule 7(3)(b) (now rule 15(3)(b)) has been drafted to ensure a document should not be disclosed on the ground that ‘disclosure may be prejudicial to national security’.

Draft rule 7(5)

One respondent suggested that rule 7(5) seemed inappropriate. For instance, they stated that *“if disclosure could not be compelled in a civil trial in England and Wales, it seems strange that a decision could be taken to order disclosure “in the interests of justice”. It suggests that all reliance on legal professional privilege would depend on the Tribunal being satisfied that an exception to disclosure is “in the interests of justice”.*

On further reflection, rules providing that an action should be taken “when it is in the interest of justice” are unnecessary because they might be taken to imply the Tribunal cannot be trusted to act in this way. All such references have, therefore, been removed from the Rules, other than at rule 18(3) (now rule 26(3), “Public hearings and directions for private hearings”).

Draft rule nine

Now rule three “Directions”

This rule contains a general power for the Tribunal to give such directions as are necessary to ensure the just and efficient hearing of the appeal. The provisions enable the Tribunal to give directions to assist the parties to prepare for the hearing, and for the Tribunal to determine promptly the issues before it.

Four respondents suggested that some provision should be made under this rule regarding expert evidence. They mentioned that *“it is clearly envisaged elsewhere in the Rules that expert evidence might be brought...(now rule 29(2)(b) “Procedure at hearing”) subject to direction under rule 9 (now rule 3) and if there is to be such evidence then its commissioning and use should be expressly regulated”.*

To specify examples of the type of directions that can be brought would be inappropriate because this could be interpreted as limiting the direction making power under new rule 9.

Rules 18 (“Commission’s response”) and 19 (“Appellant’s reply”) require the Commission and the appellant to: indicate whether they intend to call expert evidence, and to specify the nature of that evidence, and request under rule 9 now rule 3 the Tribunal’s permission to call them as witnesses. In addition rule 21 (now rule 29 “Procedure at hearing”) also makes reference to expert evidence in rule 9 (now rule 3, “Directions”), again to provide the Tribunal with due notification and details about that evidence.

Draft rule 10

Now rule 12 “Consolidation of appeals or applications”

This rule sets out that where two or more appeals or applications have been filed the Tribunal can direct that they can be consolidated if they are about the same matter, separate issues in the same matter, or which involve the same issues.

One respondent suggested that *“this rule is too narrow in requiring the matter to be the same or all issues to be the same and that since the power is discretionary, it should extend to where one or more similar issues arise in two or more matters”*.

The rule has now been redrafted to make it wider in its application.

It was also suggested that as this rule allows for the consolidation of two or more appeals in respect of the same matter or which involve the same issues that they should also apply in relation to references.

As a result of this suggestion rule 10 now applies Part 6 of the Rules (“Special provisions for references”).

Draft rule 11

Now rule 13 “Pre-hearing review”

This rule contains provisions that are to apply when the Tribunal has directed that a review of an appeal or an application may take place at any time before the hearing. It states the time limit for the notice to be given by the Tribunal of the time and place of the pre-hearing review and what the Tribunal must do at the review, such as make the directions it considers necessary to ensure the just and efficient conduct of the appeal.

Rule 11(2)

Now rule 13(1)

One respondent mentioned that the reference to “both parties” should be amended to “all parties”, as there may be more than two.

The definition of “party” has been amended so that it is clear that there may be more than one appellant.

Draft rule 16

Now rule 24 “Withdrawal of appeal or application and unopposed appeals or applications”

This rule provides that the appellant may withdraw an appeal or an application in writing at any time before the hearing without the Tribunal’s permission, or at the hearing with the Tribunal’s permission, and that the Tribunal may dismiss the appeal or application. In the same way, the Commission may also state that it does not oppose the appeal or the application or that it is withdrawing its opposition. The Tribunal must then allow the appeal or application.

Rule 16(2)

Now rule 24(2)

One respondent requested that the wording of this Rule be clarified so that if the Commission does not oppose an appeal or application the case will be "discontinued".

The concern related to the possibility of persons withholding information from the Commission when the latter makes their original decision, to enable that person to use rule 16 to their advantage to win their appeal. That is, the Commission would not oppose their appeal because in the light of newly disclosed evidence they would no longer agree with the original decision they made and would withdraw their opposition to it. The effect under old rule 16 would be that the appellant would “win” their appeal.

It would not be appropriate to change rule 16(2) to the effect that an appeal could never be allowed but merely discontinued, because this would mean that there would not be the finality to a decision of the Tribunal that would allow a legitimately won appeal under old rule 16(2).

Paragraph 1(4) of Schedule 1C of the Act expressly provides that the Tribunal can take into account evidence that was not available to the Commission when determining an appeal. Taken together these provisions should ensure that an appellant is not able to abuse the system in the manner that the respondent feared.

Draft rule 18

Now rule 26 “Public hearings and directions for private hearings”

This rule provides that subject to its provisions, all hearings must be public. It then provides that the Tribunal may direct that a hearing be held in private if the parties ask for it and the Tribunal is satisfied that a hearing in private is necessary in the circumstances and would not prejudice the interests of justice.

One respondent was concerned that the provisions in this rule do not sufficiently safeguard the principle of open justice, in that they give too much say to the parties, and place insufficient restriction on the Tribunal in exercising its power to direct a private hearing.

The respondent believed that, following the provisions in Civil Procedure Rule 39.2, there should be a statement of the general rule that a hearing is to be in public, and then set out the limited circumstances in which a hearing or part of it may be in private.

The rule was not amended. Old rule 18 as drafted - (rule 18(3)(b)) - allows the Tribunal a degree of flexibility and discretion in determining whether a case should be heard in private. Stipulating a set of criteria (even if they are examples) could prove to be too restrictive. Also, listing different examples implies that there are only certain types of circumstances under which a private hearing can be held.

One respondent requested that there should be provision in the Rules to allow the Tribunal to order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness. However, the Tribunal already has power to do this under the directions rule (old rule 9 now rule 3) in addition to its obligation to comply with the law generally.

Draft rule 19

Now rule 27 “Representation at hearings”

This rule provides that parties may be assisted or represented by any person, whether or not that person is legally qualified, or may alternatively represent themselves at the hearing. It also provides that the Tribunal can refuse to permit a person to assist or represent a party at the hearing.

One respondent suggested that the Tribunal may have to deal with individuals made the subject of a civil proceedings order (“vexatious litigants”) under section 42 of the Supreme Court Act 1981 and now acting as “litigation friends”.

A new provision (rule 27(3)) has been included in the Rules that states that where a person has had an order made against them under section 42 of the Supreme Court Act 1981 or section 33 of the Employment Tribunals Act 1996 and are not acting in their professional capacity, he or she must make an application to the Tribunal for permission to represent any person.

Draft rule 23

Now rule 31 “Publication of decisions of the Tribunal”

Rule 23 allows for the Tribunal to invite representations from parties before making a decision not to publish all or part of a decision.

One respondent asked whether this rule would *“allow a party to make an unsolicited representation? For example the Commission may want to make such a representation in order to protect the public interest in relation to cases that may impact on national security”*.

As drafted the Rule leaves the matter to the Tribunal's consideration. That could imply that a person could bring to the Tribunal's attention a reason why disclosure of a certain matter should not happen, but there is no express provision.

The rule has been redrafted to make it clear that a party can request that restrictions be put in place.

Draft rule 25

Now rule 33 “Costs”

This rule sets out the circumstances where the Tribunal may make a costs order. The Tribunal may make a costs order where, for example, it considers the appellant's conduct in bringing the appeal or application or the appellant's conduct in relation to the appeal or application, or the Commission's decision or conduct, to be frivolous, vexatious or unreasonable. The Tribunal must not make any order under this rule without first giving the paying party an opportunity to make representations against the making of such an order. If the Tribunal makes a costs order against the Commission, it may order the Commission to pay the whole or part of the costs incurred by a party in connection with proceedings before it.

Rule 25(3)

Four respondents stated that the term “unreasonable” rather than an “irrational” decision is used in the Act with regard to the Tribunal considering making a costs order. It was suggested that an amendment should be made in order to achieve consistency with the Act.

The rule has been revised so that it contains only matters that are not set out in the Act.

Draft rule 26

Now rule 34 “Review of the Tribunal’s decision”

This rule provides that the Tribunal may decide to review its own decision, or do so at the request of a party to the appeal or application, where it thinks that it was wrongly made as a result of an accidental error on the part of the Tribunal staff. It states the time limits for a party to make an application for a review and provides for both parties to make representations on any application or proposal for review. In such cases the Tribunal may set aside its decision, and, if it does, the Tribunal must substitute such decision(s) as it thinks fit or order a re-hearing. This rule also provides for the method of notifying the parties of the Tribunal’s decision.

Rule 26(1)(a)

Now rule 34(1)

Some respondents suggested that the word “accidental” be replaced with the word “administrative”.

The word “accidental” was amended to read as “administrative”, so that it is clear about the kind of errors that this provision intends to cover.

One respondent suggested that notifications under rule 26(10) (now rule 34) should be made subject to the procedures set out in rule 24 (now rule 32, “Notification of the Tribunal’s decision”).

This amendment is included in rule 34(4).

One respondent raised the following query: *‘If new evidence has emerged, which might have been foreseen by or even been known by, one party or another (or a Tribunal member) but has a potentially radical impact – would the Tribunal be able to review its decision if this scenario occurred?’*

While we believe that a rule allowing a review to take place to remedy an administrative error can be provided under section 2B(1)(b) of the Act, we do not think that power would allow a review to be conducted when new evidence had become available since the conclusion of the hearing. Therefore, it is not possible to amend the Rules along the lines suggested.

Draft rule 27

Now rule 35 “Permission to appeal to the High Court”

This rule provides that a party may apply to the Tribunal seeking permission to appeal the Tribunal’s final decision on a point of law to the High Court in England and Wales. It sets out the procedure for making an application, including time limits.

Rule 27(1)(b) and (c)

Now rule 35 (1) (b) and (c)

One respondent suggested this rule should be redrafted so the request for permission to appeal to the High Court must be in writing, as this would make it explicit as to what is required.

The Rules were amended accordingly.

Some respondents requested that the “14 days” time limit at draft rule 27(1)(b) and (c) (now rule 35(1)(b) and (c)) should be amended to read “28 days”. It was considered that “14 days” as too short a time within which to request permission from the Tribunal to appeal to the High Court.

The rules were amended accordingly.

One respondent raised the following query: *“Only the original parties to the Tribunal appeal appear to be able to request an onward appeal to the High Court. Does this preclude the Attorney General from taking the case to the High Court unless they had been a party to the original appeal?”*

Section 2C makes it clear that the Attorney General and the Commission are to be treated as parties to all proceedings before the Tribunal for the purposes of bringing an appeal to the High Court under that section. This is clarified in rule 2 (“Interpretation”).

Draft rule 27(2)(c)

Now rule 35(2)(c)

One respondent suggested there should be some provision about the test the Tribunal will apply to a request for permission to appeal to the High Court: *‘This might be that there is a real prospect of success or some other compelling reason why the appeal should be heard’.*

They further suggested that the test should be the same as the test that the High Court would apply should the application be renewed there and stated the following:

“paragraph 27(2)(c) should therefore require the applicant to state the grounds and set out clearly the reasons why there is a real prospect of success or the compelling reason why the appeal should be heard”.

After careful consideration, we do not think that it is appropriate to set down in the Rules the test the Tribunal should apply when considering permission. The rules require the applicant to state the reasons for appealing the Tribunal’s decision and we think those grounds are sufficient to enable the Tribunal to decide whether permission should be granted. When deciding whether or not to grant permission to bring an appeal the only criteria set out in section 2C is whether there is a point of law. We do not have the power to limit the criteria for appeal set out in the Act as has been suggested.

As a result the suggestion was not incorporated into the Rules.

Draft rule 28

Now Rule 36 “Decision as to permission to appeal to the High Court”

This rule provides for the procedure to be followed by the Tribunal when considering an application for permission to appeal to the High Court. Rule 28 also provides that if the Tribunal refuses permission to appeal to the High Court it must notify the applicant of the time within which an application may be made to the High Court in England and Wales for permission to appeal to that Court.

One respondent *“did not see why the applicant and other parties should not receive a written notification of the decision and the reasons for it in the case of an oral application. A written notice of the decision and reasons should also be given”*.

Rule 28(3) was amended to require the Tribunal always to send written notice of its decision and reason(s) in the case of an oral application.

Draft rule 31

Now rule 5 “Powers of Tribunal to strike out etc.”

This rule provides for the circumstances, which the Tribunal may strike out an appeal notice, any documents or written representation at any stage in the proceedings, if they consider it an abuse of the Tribunal’s processes. Before making such an order, an opportunity is to be given to the party against whom it is proposed to make the order, to make representations.

Two respondents requested that the Rules should allow the Tribunal to have authority to deal with vexatious litigants. It was suggested that because of the range of parties that can take proceedings before the Tribunal under the provisions of the Act, there is a risk that the Tribunal could be vulnerable to applications by vexatious litigants wishing to continue with their activities (whether as a party or a “litigation friend”).

To that end new rule 11 (“Orders against a vexatious litigant”) and rule 27 (“Representation at hearings”) ensure that a person who is the subject of an order naming them as a vexatious litigant must request the permission of the Tribunal before they or their representative, can take proceedings before the Tribunal.

Draft Rule 34

Now rule 8 “Signature of documents”

This rule sets out the methods for tribunal-users to produce a signature on documents. This can be by using a computer or other mechanical means.

A respondent has suggested that *“this rule appears to be too rigid in stating that only the person who is supposed to sign can type the signature”*. It was suggested that provisions should be drafted to allow for a document to be signed on behalf of that individual with their permission.

This rule was amended so that reference to “typing” the signature is omitted. Rather, the relevant individual’s signature need only be “produced” by electronic or other mechanical means.

Part 6 “Special provisions for references”

Draft Rules 37 to 42

Now rules 38, 39 and 40

Part 6 makes special provision for references that are brought by the Attorney General or the Commission under Schedule 1D to the 1993 Act. This Part essentially provides for the manner in which a reference is initiated, the selection of parties who apply to the Tribunal to be respondents to a reference and the contents of the respondent’s notice.

One consultee considered that the provisions made by the Rules in Part 6 should be simplified:

They stated that “As references will only be made by the Attorney General or by the Commission (with the consent of the Attorney General), the provisions made by the Rules should be simplified so as to provide, for example, that after a reference has been made the Tribunal convene a directions hearing at which the conduct of the reference be considered and all necessary directions be made.”

To this end Part 6 now consists of Rules 38, 39 and 40. Draft rule 42 was deleted as it duplicated rule 14 (now rule 22, “Intervention by Attorney General in appeals and applications”). Part 6 also makes provision for a directions hearing to be convened to decide the manner in which reference proceedings are to be conducted.

Rule 42

“Intervention by the Attorney General in references brought by the Commission”

One respondent commented on the fact that the Rules as drafted “*make no provision for the case where the Tribunal is requesting the assistance of the Attorney General as advocate to the court under section 2D(4)(b) of the Charities Act 2006*”.

As a consequence of this response a new rule 23 (“Requests to the Attorney General for assistance”) was incorporated into the Rules.

Responses to specific questions

Question 1: Rule 3

Appellant's written notice

Rule 3(2) states that a written notice must be filled not later than 28 days after the date on which the appellant was notified of the Commission's final decision. Due to the different persons who are entitled to be a party to an appeal or application, the date of notification may be the date that the Commission published its decision on its website.

The 28 days as quoted in the Rules follows the policy aiming to expedite cases which is adopted by the majority of Tribunals within the Tribunals Service

Do you consider that the time scale of 28 days is insufficient to file an appeal with the Tribunal? Please state any particular impacts that should be taken into account and why.

Most of the consultees considered 28 days as too short a time within which to lodge an appeal, application or review.

Some of the concerns were as follows:

"Charities may need to call a meeting of trustees before deciding to go ahead with an appeal to the Charity Tribunal. If they need to call a special meeting on an issue, they will probably have some provision written into their governing document over how much notice they have to give for special meetings".

"For some charities it is considered unrealistic to expect them to be able to call a trustee meeting in less than a month, especially as they will almost always be required to take specialist advice".

Following further reflection and being satisfied that it would not be detrimental to the overall processes of the Tribunal, "28 days" has been amended to "42 days".

Question 2: Rule 37

Notice of reference

Rule 37(6)(b) states that once a reference has been made, the Tribunal will publish the details of the reference on the Tribunal's website.

Do you consider that using only the Tribunal's web-site to publish details of references will provide sufficient notice to those who may want to be party to a reference? If not, please suggest alternative forums that could be used to alert tribunal-users to details of references.

Many of the respondents stated it would be helpful for people with a general interest in charity law if details of references appeared on the Charity Commission's website as well as the Tribunal's website, particularly as the Attorney General and the Commission, with the consent of the Attorney General, can refer questions of charity law to the Tribunal.

Some respondents also suggested that whilst larger charities will arrange for a regular examination of the Tribunal's website, smaller charities will not have the resources to be able to buy such a service, or the time to do this in-house. There needs to be a system that will draw references to the attention of charities. It was suggested that traditional methods could include "advertising" the references in 'Third Sector', 'Charity Finance' and the 'London Gazette'.

Taking the comments into account, it was decided rule 37(6)(b) (now rule 38(6)(b)) should remain as drafted, that is, without reference to the method or form of publication. The question of publication could be considered by the President of the Tribunal and made the subject of a direction, so allowing flexibility in publication arrangements.

Conclusion and next steps

Following consultation, the Rules were submitted to the Minister to be made under powers conferred by section 2B of the 1993 Act, and after consultation with the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992. The Rules were subject to the negative resolution procedure in Parliament and came into force on 27 February 2008.

Section 73 of the Act requires the appointment of a person to review the operation of the Act within five years of Royal Assent (so, by November 2011). This review will include an assessment of the impact of the Charity Tribunal.

The Government also made a commitment to publish plain English guidance so that the practice and procedure of the Tribunal is readily understandable. The Tribunals Service is developing that guidance, which will be made available on the Tribunal's website.

We would like to take the opportunity to thank all respondents who took the time and trouble to provide comments about the draft Rules. Those responses were invaluable in determining the final draft of the Rules, which can be found at annex B.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326 or email her at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

**Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

- Attorney General's Office
- Bates Wells & Braithwaite Solicitors
- Bircham Dyson Bell Solicitors & Parliamentary Agents
- Charity Commission
- Charities' Property Association
- Charity Trustee Networks
- Harbottle & Lewis LLP (one of the leading UK's leading media, entertainment & communications law firm)
- Institute of Chartered Secretaries & Administrators
- Jeffrey Hackney (Wadham College Oxford)
- Lawyers' Christian Fellowship
- Law Reform Committee of the General Council of the Bar
- Matthew Arnold & Baldwin Solicitors
- Ministry of Defence (Staff Assistance & Pensions Service Funds)
- Mrs Walmsley (Trustee of a small independent church)
- National Council for Voluntary Organisations
- Professor Stuart Goodwin MD FRCPATH
- Professor Jean Warburton (Charity Law Unit, Liverpool Law School)
- R L Glasspool Charity Trust
- Stewardship Services (UKET) Limited
- Working Alternatives
- Withers LLP Solicitors
- Wycliffe Associates (UK) Trust
- Welsh Language Board

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