



Ministry of
JUSTICE

The Draft Charity Tribunal Rules 2007

A Consultation Paper

CP 19/07

15 August 2007

This consultation will end on 7 November 2007



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A consultation document produced by the Ministry of Justice. This information is also available on the Ministry of Justice website at www.justice.gov.uk

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Executive summary

This paper seeks your views on the draft Charity Tribunal Rules 2007 ('the Rules').

The Lord Chancellor has the power to make procedural rules about the conduct of proceedings before the Charity Tribunal ("the Tribunal") in accordance with section 2B of the Charities Act 1993 ('the 1993 Act') inserted into the 1993 Act by section 8 of the Charities Act 2006 ('the Act'). The Rules are expected to come into force to coincide with the commencement date of the Tribunal which it is anticipated will be in early 2008. The Act and the Rules apply to England and Wales.

The Act aims to provide a modern and effective legal framework for charities, to clarify what "charity" means in law, and to enhance public trust and confidence in both the concept of charity and charities themselves.

The Act establishes a new regime for the regulation of charities in England and Wales. Section 1A of the 1993 Act, inserted by section 6 of the Act provides new arrangements for the independent regulator, the Charity Commission ("the Commission"), established as a non-ministerial government department.

Section 2A of the 1993 Act, as inserted by section 8 of the Act, establishes the Tribunal to provide a mechanism for keeping certain decisions of the Commission under review. Currently, appeals are to the High Court. The Tribunal will provide a less expensive and time-consuming avenue of appeal.

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 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 Tribunal will be unique when compared with existing Tribunals Service Tribunals, in two ways:

- the Attorney General will be able to intervene in any case before the Tribunal to argue in the interests of the general public, any question in relation to the proceedings, under their constitutional role as protector of charity; and

- the Attorney General or the Commission (with the Attorney General's consent) may refer a question of charity law to the Tribunal without a decision first having been made. This "reference" procedure is very different to the usual function carried out by most Tribunals in that the Tribunal is not being asked to reconsider a decision made by one party in relation to another party appearing before it. Rather, the Tribunal is being asked to consider a question relating to charity law.

The Charity Tribunal Rules will govern the practice and procedure in relation to proceedings before the new Tribunal. They will ensure that proceedings before the Tribunal are handled as fairly, efficiently and as quickly as possible.

Introduction

This paper sets out for consultation the draft Charity Tribunal Rules 2007. The Lord Chancellor is obliged by section 8 of the Tribunal and Inquiries Act 1992 to consult with the Council on Tribunals on these Rules. The consultation is also aimed at stakeholders who have the specialised knowledge and experience to comment on the proposals.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office, and falls within the scope of the Code. The Consultation Criteria, which are set out on page 21, have been followed.

The Office of the Third Sector, Cabinet Office, has responsibility for charity law and regulation in England and Wales, including implementation of the Act. The Tribunals Service is an executive agency of the Ministry of Justice, and is responsible for the operation of the Tribunal and for consulting on the Rules.

We consider that as the Rules are primarily functional they alone do not create costs or savings for those appealing to the Tribunal. The impacts, risks and benefits of this Tribunal were considered in an RIA developed by the Office of the Third Sector on the policy behind the Act and the Tribunal. This can be found at: http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/charities_act_2006/background.asp

Consequently, this paper does not contain a Partial Regulatory Impact Assessment. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to:

- Attorney General's Office
- Charity Commission
- Charity Commission's Independent Complaints Reviewer
- Charity Complaints Forum
- Charity Law Association
- Charity Trustee Networks

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- Civil law & Justice Division, Ministry of Justice
- Council on Tribunals
- General Council of the Bar
- Government Complaint Handlers' Network
- Law Society
- National Assembly for Wales
- National Council for Voluntary Organisations
- Office of the Parliamentary and Health Service Ombudsman
- Office of the Third Sector, Cabinet Office
- Treasury Solicitors
- Tribunals Service judiciary
- Wales Council for Voluntary Action
- Wales Office

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

The draft Rules are divided into six parts: Part 1, Introduction; Part 2, Preliminary matters; Part 3, Hearings; Part 4, Appeals from the Tribunal; Part 5, General matters; and Part 6, Special Provisions for References.

The draft Rules attempt to achieve a balance between providing a clear framework for the Tribunal's practice and procedure, whilst ensuring that the Tribunal will have flexibility to respond to particular circumstances – such as different types and complexities of cases. A summary of the main provisions follows.

Part 2: Preliminary matters in appeals and applications

Rule three

Appellant's written 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 that the appellant should include in this notice. It specifies that an appeal or application for review must be filed within 28 days of receipt of the Commission's final decision (after the Commission's Decision Review process). Rule 3 also 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 provision for the appellant to apply to the Tribunal for the time limit for bringing an appeal or an application to be extended or for the Tribunal to make a direction.

Rule four

The Commission's statement of case

This rule provides for the Commission to send a written statement ('statement of case') in support of the decision which is being appealed to the Tribunal. It states the time limit of 28 days for the Commission to send the statement of case following notice of appeal or application from the Tribunal. It sets out the information that the Commission should include, such as the reasons for the Commission's decision and the statutory provisions under which the decision was taken. It requires the Commission to send a copy of the statement of case to the appellant, and allows the Commission to apply to the Tribunal for directions or for the time limit for filing its statement of case to be extended.

Rule five

Appellant's reply

The rule provides that the appellant may file with the Tribunal a written reply in response to the Commission's statement of case and that at the same time the appellant must send a copy to the Commission. It states a time limit of 28 days from receipt of the Commission's statement of case for the appellant to file their reply. It sets out the information the appellant must include, such as all matters contained in the Commission's statement of case which the appellant disputes, together with the reasons for disputing them.

Rule six

Secondary disclosure by the Commission

This rule provides for the Commission, after seeing the appellant's reply, to disclose a list of material that it has not already disclosed if it thinks that it would assist the appellant's case. Rule 6 states a time limit of 14 days for the Commission to file a list of such further material to the Tribunal. The rule sets out that the Commission must send a copy of the list to the appellant.

Rule seven

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 statement of case, or the appellant's reply to that statement of case, or any further information that is to be provided by the Commission by way of secondary disclosure. A party seeking such permission may apply to the Tribunal stating the grounds on which they rely in support of non-disclosure, for example, that the disclosure of the document would not be in the public interest.

Rule nine

Directions

This rule contains a general power for the Tribunal to give such directions as are necessary to ensure the just and efficient hearing an appeal. The provisions enable the Tribunal to give directions to assist the parties to prepare for a hearing, and for the Tribunal to determine promptly the issues before it. The Tribunal may give directions at the request of a party or on its own initiative.

Rule 11

Pre-hearing review

This rule contains provisions that are to apply when the Tribunal directs that a review of an appeal or an application is to take place at any time before the hearing. Rule 11 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 all directions it considers necessary to ensure the just and efficient conduct of the appeal or application.

Rule 12

Application for permission to make a late appeal

This rule sets out what the Tribunal must consider when deciding whether to allow an appellant to make an appeal or application after the time limit for doing so has expired. It makes clear that no permission will be granted in any case where the Tribunal considers it to be contrary to the interests of justice.

Rule 14

Intervention by Attorney General in appeals and applications

This rule allows the Tribunal to make a direction either on its own initiative or following the request by a party or from the Attorney General (if they are not already a party) that all documents that have been filed with the Tribunal in relation to the appeal or application are sent to the Attorney General. This can occur at any stage of the appeal or application proceedings. It sets out the procedure for the Tribunal to follow upon receipt of notification from the Attorney General whether the Attorney General intends to intervene in the appeal or application. The Tribunal may direct that a hearing be held to enable the Tribunal to make directions to clarify how the appeal or application is to proceed when the Attorney General intends to intervene. The Rule also provides a time scale for notice of the hearing to be given to the parties by the Tribunal.

Rule 15

Preliminary hearing

This rule provides that the Tribunal may arrange a preliminary hearing to determine any preliminary question of fact or law that appears to be at issue in relation to an appeal or application. It also allows the Tribunal to treat the preliminary hearing as the substantive hearing of the appeal or application where the former essentially disposes of the appeal or the application. Additionally, if both parties agree in writing, the Tribunal may determine the preliminary question without an oral hearing. However, the Tribunal may not at the same time dispose of the appeal or application without an oral hearing having been held unless the parties have agreed to this in writing.

Rule 16

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 must dismiss any appeal or application that is withdrawn in this way. The same procedure applies to the Commission. The Commission may also state that it does not oppose the appeal or the application or that it is withdrawing its opposition and that the Tribunal must allow the appeal or the application.

Part 3: Hearings of appeals and applications

Rule 17

Determination without oral hearing

This rule specifies the circumstances in which the Tribunal may determine an appeal or an application, or any particular issue, without an oral hearing if the parties agree to that in writing, or the issue concerns a request for directions.

Rule 18

Public hearings and directions for private hearings

This rule provides that all hearings shall be in public but that the Tribunal may direct that all or part of a hearing can be held in private in certain circumstances if the Tribunal is satisfied that it would not be prejudicial to the interests of justice.

Rule 19

Representation at hearings

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

Rule 20

Adjournment of hearing

This rule provides that the Tribunal will only allow an appeal or an application to be adjourned where it is satisfied that the appeal or application cannot otherwise be fairly determined. It specifies the information a party must provide when requesting the adjournment of a hearing. Where an adjournment is granted the Tribunal will fix a new date for the hearing to take place.

Rule 21

Procedure at hearings

This rule states that the Tribunal must conduct all hearings under the Rules in any manner that the Tribunal considers most suitable to clarify the issues before it and generally to ensure the effective and timely determination of the proceedings. The rule also makes provision about the treatment of evidence by the Tribunal and the rights of the parties in respect of evidence.

Rule 23

Publication of decisions of the Tribunal

This rule sets out the procedure for the Tribunal to publish its decisions. The Tribunal is also given the power to restrict such publication when it considers it necessary to do so. This rule also provides that, before the Tribunal reaches a decision on whether to impose restrictions on publication, the Tribunal must invite the parties to make representations.

Rule 25

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 a party's conduct in relation to the appeal or application, to be frivolous, vexatious or unreasonable. In addition the Tribunal may make a costs order against the Commission where it considers the Commission's decision is irrational. The Tribunal must not make any order under this rule without first giving the potential paying party an opportunity to make representations against the making of such an order. If the Tribunal makes a costs order against the party or the Commission it may order that they pay the whole or part of the costs incurred by a party in connection with proceedings before it.

Rule 26

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 the decision was wrongly made as a result of an accidental error on the part of the Tribunal staff, or if new evidence becomes available immediately following the conclusion of the hearing. 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 obliges the Tribunal to notify the parties of the Tribunal's decision.

Part 4: Appeals from the Tribunal in appeals and applications

Rule 27

Permission to appeal to the High Court

This rule provides that a party to an appeal or application 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 (14 days) for filing such an application.

Rule 28

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 under rule 27. 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.

Rule 29

Appeal remitted by the High Court for rehearing

This rule allows these Rules to apply where an appeal has been remitted back to the Tribunal from the High Court for a rehearing and determination, and sets out the time limits for the Tribunal to give directions in relation to a rehearing.

Part 5: General matters in appeals and applications

Rule 32

Failure to comply

This rule sets out the action the Tribunal may take where a party has, without reasonable excuse, failed to comply with a direction, or with a provision of the Rules. It also provides that no action will be taken until the person to whom that action is intended to apply has had the opportunity to make representations.

Rule 33

Irregularities

This rule provides that any irregularity resulting from failure to comply with any provision of these Rules, or any direction of the Tribunal that arises before the Tribunal has reached its decision, does not itself render the proceedings void. This rule also enables the Tribunal to correct clerical mistakes or errors arising in any document from an accidental slip or omission.

Rule 35

Calculation of time

This rule sets out the method for calculating periods of time for the carrying out of any act specified by these Rules or by a direction of the Tribunal.

Part 6: Special provisions for references

Rule 37

Notice of reference

This rule sets out that for the purposes of Part 6 and where these Rules are stated as applying to the proceedings in a reference, “party” means the referrer or the respondent. Rule 37 sets out the procedure for those making the reference, being either the Commission or the Attorney General, to make an application to the Tribunal in writing by way of a notice of reference, and outlines the information that the referrer should include in this notice. It sets out the procedure for the Tribunal to follow upon receipt of a notice of reference, including publishing details of the reference to enable persons who may be affected by the question being referred to apply to the Tribunal to be a party to the reference.

Rule 38

Respondent’s notice

This rule sets out the procedure for the Tribunal to follow in respect of those who are respondents to the reference. Rule 38 also states the obligations that are on the respondents in relation to the respondent’s notice, such as, the time limit (28 days) within which the respondent must file their notice. Rule 38 sets out the information the respondent should include in the notice, such as the impact that the question being referred may have on the respondent or other persons identified by the respondents.

Rule 39

Referrer’s reply

This rule provides the period of time (28 days) during which the referrer may file a notice of reply in response to a respondent’s notice. Rule 39 sets out the information the referrer must include in the reply such as the matters contained in the respondent’s notice that the referrer challenges, and the referrer’s reasons for challenging. At the same time as filing the reply this rule explains that the referrer must send the reply to all the respondents to the reference.

Rule 40

Procedure at the reference hearing

Rule 40 provides that the Tribunal may decide a reference either with or without an oral hearing. The Tribunal may only determine a reference without an oral hearing if the parties agree in writing or the issues concern a question for directions. It states that rules: 9; 11; 18; 21; 23; 24; 25(1), (2), (5), and (6); 29; and Part 5 of the Rules, apply to the determination of references as they apply to the determination of appeals and applications.

Rule 41

Permission to appeal to the High Court

This rule provides that rule 27(1)(a), (b) and (2) (permission to appeal to the High Court) and rule 28 (decision as to permission to appeal to the High Court) apply to references as they apply to appeals and applications under the Rules.

Rule 42

Intervention by the Attorney General in references brought by the Commission

This rule sets out the time scale for the Attorney General to determine whether they intend to intervene in the reference proceedings brought by the Commission. If the Attorney General notifies the Tribunal that they intend to intervene, the rule sets out the procedure that the Tribunal will follow to clarify how the reference is to proceed and ensure that the necessary documents are filed with the Tribunal and sent to the Attorney General and other parties. Rule 42 reflects the practice in relation to interventions by the Attorney General in appeals and applications under rule 14.

Questionnaire

Question 1: Rule 3 - Appellant's written notice

Rule 3(2) states that a written notice must be filed 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 Tribunal's 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.

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 website to publish the details of references will provide sufficient notice to those who may want to be a party to a reference? If not, please suggest alternative forums that could be used to alert tribunal-users to details of references.

The other draft rules

In addition to these specific questions we would be grateful for comments and feedback on any of the draft Rules.

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 7 November 2007 to:

Jenny Patterson
Tribunals Service
Ministry of Justice
Business Development Team
Zone 1.02 Tribunals Service 1st Floor
4 Abbey Orchard Street
London
SW1P 2BS

Tele: 0207 340 6572
Fax: 0207 340 6580
Email: ctconsultation@tribunals.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>

Publication of response

A paper summarising the responses to this consultation will be published in March 2008. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us 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 Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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 time scale for responses. [where is the deadline for any responses set out?
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.

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 the Ministry of Justice Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@justice.gsi.gov.uk

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

**Laurence Fiddler
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 under **the How to respond** section of this paper at page 19.

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