1. The first purpose of this consultation is to seek views on a proposed change to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“GRC Rules”) to provide for a time limit as regards a person applying to be joined as a party to a reference in a charity case. Currently, there is no time limit on such applications being made. Upon entry by the First-tier Tribunal of the reference onto the Register of Cases, persons who are entitled to join as a party (with the First-tier Tribunal’s permission) may apply to do so at any time.

2. Because in many cases a reference in a charity case will be transferred by the First-tier Tribunal to the Upper Tribunal, the secondary purpose of this consultation is to consider whether any change is also necessary to the Tribunal Procedure (Upper Tribunal) Rules 2008 (“UT Rules”), in light of the proposed time limit in the GRC Rules (see above).

3. A reference in a charity case (or a preliminary issue in a reference) may be transferred to the Upper Tribunal at any time. Persons who are entitled to join a reference as a party (with permission) may not have applied to the First-tier Tribunal to do so prior to such transfer, and may thus wish to apply to the Upper Tribunal for that purpose. They may apply to do so at any time, as currently there is no time limit on such applications being made.

4. Responses to the consultation will be considered by the Tribunal Procedure Committee, (‘the Committee’) which is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and the Upper Tribunal.
5. Below you will find further information on the following:

- the First-tier Tribunal and the Upper Tribunal
- background on the General Regulatory Chamber of the First-tier Tribunal
- background to the current procedure in the First-tier Tribunal, and the Upper Tribunal, and the effect of the proposed rule changes
- Rules identified for possible amendment, and drafts of such amended rules
- the consultation questions
- how to respond and by when.

6. The GRC Rules and UT Rules can be found on the Tribunals Service website. The specific Rules governing application by a person to be joined as a party can be found below. The consultation questions are also in a separate Word document, which can be used for submitting your response.

Further information on the Tribunal Procedure Committee can be found at, http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm

General information on Tribunals can be found at: http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/index.htm

For specific information regarding the Charities jurisdiction

The First-tier Tribunal and the Upper Tribunal

7. The Tribunals, Courts and Enforcement Act 2007 ("the TCE Act") provides for the First-tier Tribunal and the Upper Tribunal. Both are independent Tribunals, and the First-tier Tribunal is the first instance tribunal for most jurisdictions.

8. The First-tier Tribunal is divided into separate chambers which group together jurisdictions dealing with like subjects or requiring similar skills.

9. The First-tier Tribunal Chambers are:
• Social Entitlement Chamber;
• Health, Education and Social Care Chamber;
• War Pensions and Armed Forces Compensation Chamber;
• General Regulatory Chamber;
• Immigration and Asylum Chamber; and
• Tax Chamber.

10. The Upper Tribunal mainly, but not exclusively, decides appeals from the First-tier Tribunal. Some cases (or a preliminary issue in such cases) in the First-tier Tribunal may be transferred to the Upper Tribunal. The Upper Tribunal also has power to deal with judicial review work delegated from the High Court and Court of Session.

**Charity jurisdiction of the First-tier Tribunal**

11. The General Regulatory Chamber of the First-tier Tribunal hears charity cases, namely

   (i) appeals or applications in respect of decisions, orders or directions of the Charity Commission; and

   (ii) references under Schedule 1D of the Charities Act 1993 (as amended), by reference to section 2A(4)(b) of that Act.

These matters are dealt with by Judges and Members of the First-tier Tribunal.

**References in particular**

12. As regards references, the Charities Act 1993 (as amended), allows the Attorney General (or the Charity Commission with the Attorney General’s consent) to refer certain questions of charity law to the Tribunal. These matters of charity law are general, rather than involving consideration of a specific decision, order or direction made by the Charity Commission.

13. For example, the Attorney General recently made a reference under Schedule 1D of the Charities Act 1993 on the issue of public benefit in the context of independent schools (the ‘independent schools reference’).
14. When a reference under Schedule 1D of the Charities Act is received, it is entered onto the Register of Cases on the First-tier Tribunal (Charity) website (http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/registered-cases.htm). It is then open to be viewed by all, including those who have an entitlement to join the proceedings (with the Tribunal’s permission) as a party.

15. Paragraphs 1(4) and 2(3) of Schedule 1D to the Charities Act set out those who are entitled to join a reference as a party, with the Tribunal’s permission, as:

(a) charity trustees of any charity likely to be affected by the decision on the reference;

(b) any such charity which is a body corporate; and

(c) any other person who is likely to be so affected.

16. In a reference, multiple and/or successive applications from individual charities and interest groups to be joined as parties may therefore be expected.

17. As with any charity case, there is scope for a reference to be transferred by the First-tier Tribunal to the Upper Tribunal. In many references such a transfer will take place. The independent schools reference has been transferred in its entirety by the First-tier Tribunal to the Upper Tribunal.

18. There is also scope for a preliminary issue in a reference to be transferred to the Upper Tribunal. It is unlikely that a preliminary issue in a reference will be transferred to the Upper Tribunal as opposed to the entirety of the reference. However, persons who have an entitlement to join a reference as parties become, with the Tribunal’s permission after application, parties to the reference itself (rather than parties to any preliminary issue).

**Current procedure in the General Regulatory Chamber and intended effect of these amendments**

19. Upon a reference being made, its details and further information about how to apply to be joined as a party are published on the Tribunal’s website (as above), in accordance with GRC Rule 26(4) (b) which provides:
26. – (1) …
(2) …
(3) …
(4) If the notice of appeal relates to a reference under Schedule 1D of the Charities Act 1993—
   (a) …
   (b) on receiving the notice of appeal the Tribunal must publish details of the reference and information as to how a person likely to be affected by the reference can apply to be added as a party to the proceedings.

20. As to how a person likely to be affected by a reference may apply to be joined as a party, GRC Rule 9 provides (generally) for applications to the Tribunal to be added as party to proceedings:

Addition, substitution and removal of parties

9.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.
   (2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.
   (3) Any person who is not a party may apply to the Tribunal to be added or substituted as a party.
   (4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

21. There is no time limit for such an application to be made. In particular, persons likely to be affected by a reference may apply to be joined as parties at any time during its currency.

22. Multiple and/or successive applications to join a reference as a party will have scope for consequent delay (perhaps considerable) in progress towards a hearing.

23. The overriding objective of the GRC Rules is to deal with cases fairly and justly. This includes avoiding delay, so far as compatible with a proper consideration of the issues.

24. The Committee considers that there should be a time limit for persons to apply to join as parties to a reference, and that GRC Rule 9 should be amended to include one.
Effective case management would be assisted by a requirement that all such applications be made within a reasonable time, so that efficient progress can be made towards a hearing date. Following expiry of the time limit, such applications to join may then be case-managed collectively (as appropriate), with directions given.

25. The Committee considers that the time limit to be imposed should be 42 days, as analogous with the time allowed for charities to bring an appeal (under GRC Rule 26). That time limit had also been imposed by (earlier) Charity Tribunal Rules 2008. In arriving at such time limit, acknowledgement was then made of the following points:

1. Charities may need to call a meeting of trustees before deciding to proceed with an appeal, and if a special meeting needs to be called there may well be obligatory notice provisions.

2. For some charities it may be considered unrealistic to expect a trustee meeting to be capable of being called in less than a month, especially as they may well be required to take specialist advice.

26. The Committee regards the same considerations as supporting the proposed 42 day time limit, rather than any shorter period.

27. If any applicant does not comply with the proposed time limit, they may seek an extension of time for so doing under GRC rule 5(3)(a), which provides:

5. –

(1)

(2)

(3) In particular, .... the Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit

...

Changes to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
28. A draft amendment to GRC Rule 9 is set out in the attached to show how the rule might be amended if the Committee were to decide to make the proposed rule change.

Transfer of references to the Upper Tribunal

29. GRC Rule 19 allows for transfer of a charity case (or a preliminary issue in such a case) to the Upper Tribunal:

19—(1) This rule applies to charities cases.....

(2) ... The Tribunal may refer a case or a preliminary issue to the President of the General Regulatory Chamber with a request that the case or issue be considered for transfer to the Upper Tribunal.

(3) If a case or issue has been referred by the Tribunal under paragraph (2), the President of the General Regulatory Chamber may, with the concurrence of the President of the appropriate Chamber of the Upper Tribunal, direct that the case or issue be transferred to and determined by the Upper Tribunal.

30. With a reference, a transfer of the entirety of the reference will take place in many cases. Although such a transfer may take place at any time, it may be at an early stage after entry by the First-tier Tribunal of the reference on the Register of Cases. The time limit proposed above for applications to the First-tier Tribunal to be joined to the reference as a party may not have expired at the time of transfer.

31. When the reference has been transferred in its entirety, applicants to join the reference as a party will thereafter have to apply to the Upper Tribunal.

Current procedure in the Upper Tribunal and possible amendments

32. UT Rule 9 provides (generally) for applications to the Upper Tribunal to be added as party:

Addition, substitution and removal of parties

9.—(1) The Upper Tribunal may give a direction adding, substituting or removing a party as an appellant, a respondent or an interested party.
(2) If the Upper Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Upper Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Upper Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

33. As with the GRC Rules, there is no time limit for such an application to be made. In particular, persons likely to be affected by a reference may presently apply to be joined as parties at any time.

34. If a reference is transferred by the First-tier Tribunal to the Upper Tribunal, again, multiple and/or successive applications to the Upper Tribunal to join the reference as a party will have scope for consequent delay (perhaps considerable) in progress towards a hearing in the Upper Tribunal.

35. The overriding objective of the UT Rules is to deal with cases fairly and justly. This includes avoiding delay, so far as compatible with a proper consideration of the issues.

36. Just as in the First-tier Tribunal, effective case management in the Upper Tribunal would be assisted by an expectation that all such applications be made within a reasonable time, so that efficient progress can be made towards a hearing date.

37. The Committee considers that the time limit proposed above for persons to apply to the First-tier Tribunal to join as parties to a reference should ordinarily be maintained where the reference has been transferred (in its entirety) to the Upper Tribunal. If so, the issue is how successfully to achieve that.

The Committee has considered 2 options.

First option

38. The first option is to provide expressly for the Upper Tribunal to give directions as regards applications from persons to become parties to references.
39. When a reference has been transferred (in its entirety) to the Upper Tribunal, the First-tier Tribunal’s Register of Cases could be amended to note the fact of transfer, and to state that any application to join the reference as a party should be made to the Upper Tribunal.

40. UT Rule 26A provides for the giving of directions in cases transferred from the First-tier Tribunal to the Upper Tribunal:

26A. (1) Paragraphs (2) and (3) apply to—
(a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal;
(b) ....

(2) In a case to which this paragraph applies —
(a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings; …

41. At the time at which such directions are to be given, there may be persons who have not yet applied to be joined as parties to the reference. The proceedings do not include them, and such persons are not yet concerned in their consideration and disposal. Thus, the directions which must be given might not be expected to deal with (future) applications to join the reference as a party.

42. The Committee considers that the Upper Tribunal might however be expressly permitted to give directions as to any time limit within which persons may apply to join a reference (if they have not yet done so).

43. UT Rule 26A might therefore be amended to include that in a reference, directions may include provision for applications to join the proceedings as a party and any time within which they must be made. The exercise of the Upper Tribunal’s discretion would take place in the context of the time limit proposed for such an application being made to the First-tier Tribunal, and the information on the First-tier Tribunal’s Register of Cases directing such a person to apply to the Upper Tribunal.

Second Option
44. A second option is that UT Rule 9 could be amended to itself include a time limit for applications to the Upper Tribunal to join a reference as a party.

45. Upon expiry of the time limit, such applications may be case-managed collectively (as appropriate), with directions given. If any applicant does not comply with the time limit, they may seek an extension of time from the Upper Tribunal under UT Rule 5(3)(a), which is in similar terms to the equivalent GRC rule (see above).

46. The Committee considers that if there is to be a time limit expressly provided for in the UT Rules, it should be the same as that proposed for the GRC Rules, in that it should commence upon publication of details of the reference by the First-tier Tribunal. The fact that a reference (or a preliminary issue in a reference) has been transferred to the Upper Tribunal subsequent to such publication should not affect that time limit.

47. The effect of the time limit would therefore be that following the transfer of a reference to the Upper Tribunal in its entirety an application to join the reference as a party should be made within that time limit to the Upper Tribunal rather than to the First-tier Tribunal.

48. Although it is unlikely that a preliminary issue in a reference might be transferred to the Upper Tribunal, leaving the balance of the reference in the First-tier Tribunal, the GRC Rules accommodate it. An application to join the reference as a party should still be made within the time limit to the First-tier Tribunal, and information would be noted by the First-tier Tribunal on the Register of Cases to that effect.

49. The Committee’s provisional view is to prefer the First Option as providing for greater flexibility. Upon transfer of a reference (or a preliminary issue in a reference) to the Upper Tribunal there may be:

- persons who have already successfully applied to the First-Tier Tribunal to be joined as parties
- others who have applied to the First-tier Tribunal for such joinder
- others having notified an intention (to an existing party, or to the First-tier Tribunal) to apply so to join
- others with an unexpressed intention to apply so to join
• persons with no current intention to apply, but who may do in future.

50. Further, the circumstances giving rise to a reference may also lead to judicial review proceedings in the Upper Tribunal. Then, it may be necessary for the Upper Tribunal to consider the interrelationship between the judicial review proceedings and the reference, and specifically as regards the parties to each. The independent schools reference (see above) followed the successful application by a party for a judicial review of the Charity Commission's guidance on public benefit. That party has now also been joined as a party to the reference.

51. In the above circumstances, it seems preferable to the Committee for the Upper Tribunal to be permitted expressly to exercise its discretion in the giving of directions as regards applications to join references as a party, and as to any time limits to be imposed, but in the context of a specific time limit having been imposed in the GRC Rules.

Changes to the Tribunal Procedure (Upper Tribunal) Rules 2008

52. Draft amendments to UT Rule 26A (First Option) and Rule 9 (Second Option) are set out in the attached to show how the rules might be amended if the Committee were to decide to make either of the possible rule changes.

Consultation Questions

53. The Committee would be interested in receiving your views on the following questions:

1) Should there be a time limit on an application to the First-tier Tribunal to join a reference as a party?
2) If so, what should be the time limit?
3) Do you have any comment on the proposed GRC rule-change?
4) Upon transfer of a reference to the Upper Tribunal, should the UT Rules provide expressly for the giving of directions concerning applications to join the reference as a party and the imposition of a time limit for that purpose?
5) If so, do you have any comment on the possible amendment to UT Rule 26A?
6) Should there be a time limit expressly imposed by the UT Rules on an application
to the Upper Tribunal to join a reference (transferred by the First-tier Tribunal in
its entirety) as a party?
7) If so, what should be the time limit?
8) If so, do you have any comment on the possible amendment to UT Rule 9?
9) Do you agree with the Committee’s provisional view that amendment to UT Rule
26A is preferable to amendment to UT Rule 9?

54. When answering the consultation questions, please do keep in mind that the
rules should be simple and easy to follow. They should not include provisions that
contain unnecessary requirements or repeat requirements that are contained elsewhere.
The Committee must secure the objectives set out in section 22(4) of the 2007 Act and it
aims to do so in a consistent manner across all jurisdictions.

How to Respond

55. Please send your response by **Tuesday 23rd August 2011** to:
Tribunal Procedure Committee
c/o Tracey Skelton
2nd Floor Arnhem House,
31, Waterloo Way,
Leicester LE1 6LR

Tel: 0116 249 4290

Extra copies of this consultation can be obtained from using the above contact details or
by visiting online at:
http://www.justice.gov.uk/about/moj/advisory-groups/ts-committee-open-
consultations.htm
**Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009**

**Addition, substitution and removal of parties**

9.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) Any person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

(5) An application by a person to be added as a party to a reference under Schedule 1D of the Charities Act 1993 must be made within 42 days of the publication by the Tribunal of details of such reference under rule 26(4).

**Tribunal Procedure (Upper Tribunal) Rules 2008**

**First Option for amendment**

**Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent**

26A. (1) Paragraphs (2) and (3) apply to—

(a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal; or

(b) a case, other than an appeal to which rule 26 (references under the Forfeiture Act 1982 applies) which is started by an application made directly to the Upper Tribunal.

(2) In a case to which this paragraph applies—

(a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings;

(aa) in a reference under Schedule 1D of the Charities Act 1993, the Upper Tribunal may give directions providing for applications to join the proceedings as a party and any time within which they must be made; and

(b) the preceding rules in this Part will only apply to the extent provided for by such directions.

(3) If a case or matter to which this paragraph applies is to be determined without notice to or the involvement of a respondent—
(a) any provision in these Rules requiring a document to be provided by or to a respondent; and

(b) any other provision in these Rules permitting a respondent to participate in the proceedings does not apply to that case or matter.

(4) Schedule 2 makes further provision for national security certificate appeals transferred to the Upper Tribunal.

Second Option for amendment

Addition, substitution and removal of parties

9.—(1) The Upper Tribunal may give a direction adding, substituting or removing a party as an appellant, a respondent or an interested party.

(2) If the Upper Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Upper Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Upper Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

(5) An application by a person to be added as a party to a reference under Schedule 1D of the Charities Act 1993 which has been transferred in its entirety to the Upper Tribunal from the First-tier Tribunal must be made within 42 days of the publication by the First-tier Tribunal of details of such reference as provided for under the rules of the First-tier Tribunal.