

*Draft Order laid before Parliament under section 49(5) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No. [xx]**

**TRIBUNALS AND INQUIRIES**

**The Transfer of Functions (Transport  
Tribunal and Appeal Panel) Order 2009**

*Made* - - - - *\*\*\**  
*Coming into force* - - *1st September 2009*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(2) and (9) and 38 of, and paragraph 30 of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(1).

A draft of this Order was laid before Parliament and approved by resolution of each House of Parliament in accordance with section 49(5) of that Act.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009 and comes into force on 1st September 2009.

(2) The amendments made by paragraphs 6 and 7 of Schedule 1 do not extend to Scotland.

**Transfer of functions of the Transport Tribunal and Appeal Panel**

2.—(1) The functions of the Transport Tribunal under the Road Traffic Act 1988(2), the Road Traffic Offenders Act 1988(3), the Postal Services Act 2000(4), the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(5) and the European Communities (Recognition of Professional Qualifications) Regulations 2007(6) are transferred to the First-tier Tribunal.

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(1) 2007 c. 15. The Appeal Panel referred to in section 189(6) of the Greater London Authority Act 1999 (c.29) was added to Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 (c.15) by the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 (S.I. 2009/XXXX).

(2) 1988 c. 52.

(3) 1988 c. 53.

(4) 2000 c. 26.

(5) S.I. 2007/605.

(6) S.I. 2007/2781.

(2) The functions of the panel of persons appointed by the Lord Chancellor under section 189(6) of the Greater London Authority Act 1999(7) are transferred to the First-tier Tribunal.

(3) The functions of the Transport Tribunal under the Public Passenger Vehicles Act 1981(8), the Transport Act 1985(9), the Goods Vehicles (Licensing of Operators) Act 1995(10), section 155 of the Transport Act 2000(11), the Local Transport Act 2008(12), the Goods Vehicles (Community Authorisations) Regulations 1992(13), the Public Service Vehicles (Community Licences) Regulations 1999(14), the Road Transport (Passenger Vehicles Cabotage) Regulations 1999(15) and the Goods Vehicles (Enforcement Powers) Regulations 2001(16) are transferred to the Upper Tribunal.

### **Additional offices to be held by persons who are members of the Transport Tribunal**

3. A person who, immediately before this Order comes into force, holds an office listed in column (1) of the following table is in addition to hold the office or offices listed in the corresponding entry in column (2) of that table.

<i>(1)</i>	<i>(2)</i>
<i>Office held</i>	<i>Office or offices to be held</i>
President of the Transport Tribunal appointed under paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985(17)	Transferred-in judge of the Upper Tribunal
Chairman of the Transport Tribunal appointed under paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985	Transferred-in judge of the Upper Tribunal
Other member of the Transport Tribunal appointed under paragraph 2(1)(b) of Schedule 4 to the Transport Act 1985	Transferred-in other member of the Upper Tribunal

### **Consequential and transitional provisions**

4.—(1) Schedule 1 contains amendments to primary legislation as a consequence of the transfer effected by this Order.

(2) Schedule 2 contains amendments to secondary legislation as a consequence of the transfer effected by this Order.

(3) Schedule 3 contains repeals and revocations as a consequence of the amendments in Schedules 1 and 2.

(4) Schedule 4 contains transitional and saving provisions.

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(7) 1999 c. 29.

(8) 1981 c. 14.

(9) 1985 c. 67.

(10) 1995 c. 23.

(11) 2000 c. 38.

(12) 2008 c. 26.

(13) S.I. 1992/3077.

(14) S.I. 1999/1322.

(15) S.I. 1999/3413.

(16) S.I. 2001/3981.

(17) 1985 c. 67.

By the authority of the Lord Chancellor

Date

Parliamentary Under-Secretary of State  
Ministry of Justice

## SCHEDULE 1

Article 4(1)

## Consequential provisions – primary legislation

**Public Passenger Vehicles Act 1981**

1. The Public Passenger Vehicles Act 1981(18) is amended as follows.
2. In section 50 (appeals to the Transport Tribunal)—
  - (a) in subsections (1) and (3) to (6), and in the heading, for “Transport Tribunal” substitute “Upper Tribunal”; and
  - (b) in subsection (8)—
    - (i) for “to the Transport Tribunal” substitute “to the Upper Tribunal”; and
    - (ii) omit “and the Transport Tribunal shall give their decision on the application within fourteen days”.
3. In section 54(8)(c) (inquiries held by traffic commissioners) for “Transport Tribunal” substitute “Upper Tribunal”.
4. In paragraph 12 of Schedule 2A (appeal to Transport Tribunal from traffic commissioner)—
  - (a) in sub-paragraph (1), and in the heading, for “Transport Tribunal” substitute “Upper Tribunal”; and
  - (b) omit sub-paragraph (2).

**Transport Act 1985**

5. The Transport Act 1985(19) is amended as follows.
6. In section 6A (applications for registration etc where restrictions are in force)—
  - (a) in subsection (9)—
    - (i) for “Transport Tribunal” substitute “Upper Tribunal”; and
    - (ii) omit “As respects appeals to the Transport Tribunal, see Schedule 4 to this Act.”; and
  - (b) omit subsection (10).
7. In section 9 (appeals against traffic regulation conditions)—
  - (a) in subsection (1) for “ the Transport Tribunal” substitute “the Upper Tribunal”;
  - (b) omit subsection (5); and
  - (c) in subsection (6) for “The persons who may appeal against any such decision of the Transport Tribunal are” substitute “For the purposes of section 13(2) of the Tribunals, Courts and Enforcement Act 2007 (appeals to Court of Appeal etc. against decisions of the Upper Tribunal) the following persons are to be treated as parties to a case”.

(18) 1981 c. 14. Sections 50 and 54 were substituted by sections 4 and 31 of the Transport Act 1985 (c. 67) and section 50 was amended by section 65(2) of the Deregulation and Contracting Out Act 1994 (c. 40). Schedule 2A was inserted by Schedule 3 to the Local Transport Act 2008 (c. 26).

(19) 1985 c. 67. Section 6A was inserted by section 48(3) of the Local Transport Act 2008 (c. 26). Section 9 is amended by section 51 of that Act. Schedule 4 is amended by paragraph 65 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41), paragraph 57 of Schedule 6 and Schedule 9 to the Judicial Pensions and Retirement Act 1993 (c. 8), paragraph 10 of Schedule 7 and Schedule 8 to the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23), paragraph 179 of Schedule 4 and paragraph 42(1) and (3) of Schedule 9 to the Constitutional Reform Act 2005 (c. 4), paragraph 17 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 76 of the Local Transport Act 2008 (c. 26), article 2 of the Transfer of Functions (Transport Tribunal) Order 1989 (S.I. 1989/495), the Schedule to the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), and regulation 10(5) of the Road Transport (Passenger Vehicles Cabotage) Regulations 1999 (S.I. 1999/3413).

8. In section 117(2) (reconstitution of the Transport Tribunal) at the end insert “; and that Schedule also makes provision in relation to appeals to the First-tier Tribunal or the Upper Tribunal under enactments relating to transport (see paragraphs 17 and 18)”.

9. In Schedule 4 (constitution, powers and proceedings of the Transport Tribunal)—

- (a) in paragraph 1 after “Tribunal” insert “(referred to in this Schedule as “the tribunal”)”;
- (b) in paragraph 8(1) omit “Subject to paragraph 9(2) below,”;
- (c) omit paragraph 9; and
- (d) after paragraph 16 insert—

#### **“Powers of First-tier Tribunal and Upper Tribunal in relation to transport appeals**

17.—(1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport.

In the case of the Upper Tribunal, this is subject to sub-paragraph (3).

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power—

- (a) to make such order as it thinks fit; or
- (b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

(4) A determination of a traffic commissioner is an excluded determination for the purposes of this paragraph if it is made under—

- (a) the Goods Vehicles (Community Authorisations) Regulations 1992<sup>(20)</sup>; or
- (b) the Public Service Vehicles (Community Licences) Regulations 1999<sup>(21)</sup>.

18. Paragraph 12 applies in relation to the First-tier Tribunal and the Upper Tribunal for the purpose of the exercise of any of their functions under an enactment relating to transport.”.

### **Road Traffic Act 1988**

10. The Road Traffic Act 1988<sup>(22)</sup> is amended as follows.

11. In section 131 (appeals)—

- (a) in subsections (1) and (2) for the words from “by notice in writing” to the end substitute “appeal to the First-tier Tribunal.”;
- (b) in subsection (3)—

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(20) S.I. 1992/3077.

(21) S.I. 1999/1322.

(22) 1988 c. 52. Section 131 was amended by section 258 and 259(4) of, and paragraph 12 of Schedule 29 to, the Transport Act 2000 (c. 38) and by paragraphs 1 and 13 of Schedule 6 and Schedule 7 to the Road Safety Act 2006 (c. 49) from a date to be appointed. Section 133ZA was inserted by paragraphs 1 and 14 of Schedule 6 to the Road Safety Act 2006 from a date to be appointed. Section 162A was inserted by section 43 of that Act.

- (i) for “Transport Tribunal” substitute “First-tier Tribunal”; and
  - (ii) for “they think” substitute “it thinks”;
  - (c) in subsection (4A)—
    - (i) for “Tribunal consider” substitute “First-tier Tribunal considers”; and
    - (ii) for “they” substitute “it”;
  - (d) in subsection (4B) for the words from “by notice in writing” to the end substitute “appeal to the First-tier Tribunal.”;
  - (e) in subsection (4C)—
    - (i) for “Transport Tribunal” substitute “First-tier Tribunal”; and
    - (ii) omit “within the period of fourteen days beginning with the day on which notice of the decision is given”;
  - (f) in subsection (4D)—
    - (i) for “Transport Tribunal”, in both places, substitute “First-tier Tribunal”; and
    - (ii) omit “by notice in writing”;
  - (g) in subsection (4E)—
    - (i) for “Transport Tribunal” substitute “First-tier Tribunal”; and
    - (ii) omit “, within the period of fourteen days beginning with the day on which it is made”;
  - (h) in subsection (4F)—
    - (i) for “Transport Tribunal” substitute “First-tier Tribunal”; and
    - (ii) for “they consider” substitute “it considers”; and
    - (i) omit subsection (4G).
- 12.** In section 133ZA(5)(b) (training) for “Transport Tribunal” substitute “First-tier Tribunal”.
- 13.** In section 162A(3)(e) (approved test assistants) for “Transport Tribunal” substitute “First-tier Tribunal”.

### **Road Traffic Offenders Act 1988**

- 14.** The Road Traffic Offenders Act 1988<sup>(23)</sup> is amended as follows.
- 15.** In section 30C(5)(f) (approval of courses) for “Transport Tribunal” substitute “First-tier Tribunal”.
- 16.** In section 34BA(5)(f) (approval of courses) for “Transport Tribunal” substitute “First-tier Tribunal”.
- 17.** In section 34F(5)(f) (approval of programmes) for “Transport Tribunal” substitute “First-tier Tribunal”.

### **Goods Vehicles (Licensing of Operators) Act 1995**

- 18.** The Goods Vehicles (Licensing of Operators) Act 1995<sup>(24)</sup> is amended as follows.

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<sup>(23)</sup> 1988 c. 53; sections 30C, 34BA and 34F were inserted by sections 34(1) and (3), 35 and 15(1) respectively of the Road Safety Act 2006 (c. 49) from a date to be appointed.

<sup>(24)</sup> 1995 c. 23. Schedule 1A was inserted by Schedule 30 of the Transport Act 2000 (c. 38).

**19.** In section 24(5) and (9)(a) (interim operators' licences) for "Transport Tribunal" substitute "Upper Tribunal".

**20.** In section 29 (revocation and disqualification etc)—

- (a) in subsection (2) for "Transport Tribunal" substitute "Upper Tribunal";
- (b) in subsection (3) for "Tribunal" substitute "Upper Tribunal"; and
- (c) omit subsection (4).

**21.** In section 35(4)(c) (power of traffic commissioners to hold inquiries) for "Transport Tribunal" substitute "Upper Tribunal".

**22.** In section 37 (right of appeal in connection with operators' licences)—

- (a) in subsection (1) for "Transport Tribunal" substitute "Upper Tribunal"; and
- (b) in subsections (2) to (6) for "Tribunal" substitute "Upper Tribunal".

**23.** In paragraph 11 of Schedule 1A (detention of vehicles used without operator's licence)—

- (a) in sub-paragraph (1) for "Transport Tribunal" substitute "Upper Tribunal"; and
- (b) omit sub-paragraph (2).

#### **Greater London Authority Act 1999**

**24.** In section 189 of the Greater London Authority Act 1999**(25)** (appeals)—

- (a) in subsections (2) and (4) after "make an appeal" insert "to the First-tier Tribunal";
- (b) omit subsections (5) to (10) and (12); and
- (c) in subsection (11)—
  - (i) for "An appeal panel which has heard an appeal against a decision" substitute "On an appeal under this section the First-tier Tribunal"; and
  - (ii) for "to the appeal panel" substitute "to the tribunal".

#### **Postal Services Act 2000**

**25.** In section 94(3)(b) of the Postal Services Act 2000**(26)** (power to require carriage of mail-bags by ship or aircraft) for "Transport Tribunal" substitute "First-tier Tribunal".

#### **Transport Act 2000**

**26.** In section 155(6) of the Transport Act 2000**(27)** (appeals to Transport Tribunal) for "Transport Tribunal" substitute "Upper Tribunal".

#### **Local Transport Act 2008**

**27.** In section 75(6) of the Local Transport Act 2008**(28)** (power to require display of certain information)—

- (a) for "Transport Tribunal" substitute "Upper Tribunal"; and
- (b) omit "As respects appeals to the Transport Tribunal, see Schedule 4 to the TA 1985."

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**(25)** 1999 c. 29. Section 189 was amended by section 267(1) to (7) of the Transport Act 2000 (c. 38).

**(26)** 2000 c. 26.

**(27)** 2000 c. 38. Section 155(6) was amended by section 64(1) and (8) of the Local Transport Act 2008 (c. 26).

**(28)** 2008 c. 26.

## SCHEDULE 2

Article 4(2)

### Consequential provisions – secondary legislation

#### **Department of Transport (Fees) Order 1988**

1. In paragraph 1 of Schedule 2 to the Department of Transport (Fees) Order 1988(29) omit “the Transport Tribunal”.

#### **Goods Vehicles (Community Authorisations) Regulations 1992**

2. In regulation 6(b)(i) of the Goods Vehicles (Community Authorisations) Regulations 1992(30) (rights of appeal) for “Transport Tribunal” substitute “Upper Tribunal”.

#### **Public Service Vehicles (Community Licences) Regulations 1999**

3. The Public Service Vehicles (Community Licences) Regulations 1999(31) are amended as follows.

4. In regulation 2(2) (interpretation) omit the definition for “Transport Tribunal”.

5. In regulation 6 (rights of appeal) for “Transport Tribunal” substitute “Upper Tribunal”.

#### **Road Transport (Passenger Vehicles Cabotage) Regulations 1999**

6. In regulation 6(2) of the Road Transport (Passenger Vehicles Cabotage) Regulations 1999(32) (appeals) for “Transport Tribunal” substitute “Upper Tribunal”.

#### **Goods Vehicles (Enforcement Powers) Regulations 2001**

7. The Goods Vehicles (Enforcement Powers) Regulations 2001(33) are amended as follows.

8. In regulation 13 (appeals from a determination of a traffic commissioner to the Transport Tribunal)—

(a) in the heading and paragraph (1) for “Transport Tribunal” substitute “Upper Tribunal”; and

(b) omit paragraph (2).

9. In regulation 14 (return of a vehicle detained) for “Transport Tribunal”, in each place, substitute “Upper Tribunal”.

10. In regulation 15(1)(b) (disposal of vehicles) for “Transport Tribunal” substitute “Upper Tribunal”.

#### **Vehicle Drivers (Certificates of Professional Competence) Regulations 2007**

11. In regulation 6A of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(34) (appeals)—

(a) in paragraph (1) for “by notice in writing” to the end substitute “appeal to the First-tier Tribunal”.; and

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(29) [S.I. 1988/643](#).

(30) [S.I. 1992/3077](#).

(31) [S.I. 1999/1322](#).

(32) [S.I. 1999/3413](#).

(33) [S.I. 2001/3981](#).

(34) [S.I. 2007/605](#). Regulation 6A was inserted by regulation 9 of the Vehicle Drivers (Certificates of Professional Competence) (Amendment) (No. 2) Regulations 2008 ([S.I. 2008/1965](#)).



(b) in paragraph (2)—

- (i) for “Transport Tribunal” substitute “First-tier Tribunal”; and
- (ii) for “they think” substitute “it thinks”.

### **European Communities (Recognition of Professional Qualifications) Regulations 2007**

**12.** In Schedule 5 to the European Communities (Recognition of Professional Qualifications) Regulations 2007(35) (appeal bodies) for “Transport Tribunal” substitute “First-tier Tribunal”.

### **Department for Transport (Fees) Order 2009**

**13.** For paragraph 10 of Schedule 1 to the Department for Transport (Fees) Order 2009(36) substitute—

“**10.** The functions of the Secretary of State or the traffic commissioners, in providing assistance and support generally to the Transport Tribunal, the First-tier Tribunal or the Upper Tribunal and in providing assistance and support in relation to any appeal before the Transport Tribunal, the First-tier Tribunal or the Upper Tribunal.”.

## SCHEDULE 3

Article 4(3)

### Repeals and Revocations

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Instrument repealed/revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Transport Act 2000	<a href="#">2000 c. 38</a>	Sections 258(2) and (3) and 267(3) to (6).
The Local Transport Act 2008	<a href="#">2008 c. 26</a>	Sections 51(2) and (5)(a) and 76.
The London Service Permits (Appeals) Regulations 2002	<a href="#">S.I. 2002/614</a>	The whole of the Regulations.

## SCHEDULE 4

Article 4(4)

### Transitional and saving provisions

#### **Transitional and saving provisions**

**1.—(1)** Any proceedings before the Transport Tribunal in relation to the Road Traffic Act 1988(37), the Road Traffic Offenders Act 1988(38), the Postal Services Act 2000(39), the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(40) or the

(35) [S.I. 2007/2781](#).

(36) [S.I. 2009/711](#).

(37) [1988 c. 52](#).

(38) [1988 c. 53](#).

(39) [2000 c. 26](#).

(40) [S.I. 2007/605](#).

European Communities (Recognition of Professional Qualifications) Regulations 2007(41) pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the First-tier Tribunal.

(2) Any proceedings before the panel of persons appointed by the Lord Chancellor under section 189(6) of the Greater London Authority Act 1999(42) pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the First-tier Tribunal.

(3) Any proceedings before the Transport Tribunal in relation to the Public Passenger Vehicles Act 1981(43), the Transport Act 1985(44), the Goods Vehicles (Licensing of Operators) Act 1995(45), section 155 of the Transport Act 2000(46), the Local Transport Act 2008(47), the Goods Vehicles (Community Authorisations) Regulations 1992(48), the Public Service Vehicles (Community Licences) Regulations 1999(49), the Road Transport (Passenger Vehicles Cabotage) Regulations 1999(50) and the Goods Vehicles (Enforcement Powers) Regulations 2001(51) which are pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the Upper Tribunal.

**2.**—(1) The following sub-paragraphs apply where proceedings are continued in the First-tier Tribunal or Upper Tribunal by virtue of paragraph 1.

(2) Where a hearing began before 1st September 2009 but was not completed by that date, the First-tier Tribunal or Upper Tribunal, as the case may be, must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The First-tier Tribunal, or Upper Tribunal, as the case may be, may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

- (a) apply any provision in procedural rules which applied to the proceedings before 1st September 2009; or
- (b) disapply provisions of Tribunal Procedure Rules.

(4) In sub-paragraph (3) “procedural rules” means provision (whether called rules or not) regulating practice or procedure before a tribunal.

(5) Any direction or order given or made in proceedings which is in force immediately before 1st September 2009 remains in force on and after that date as if it were a direction or order of the First-tier Tribunal or Upper Tribunal, as the case may be.

(6) A time period which has started to run before 1st September 2009 and which has not expired shall continue to apply.

(7) An order for costs may only be made if, and to the extent that, an order could have been made before 1st September 2009.

**3.** In respect of proceedings referred to in paragraph 1(1) where an appeal lies to a court from any decision made by the Transport Tribunal before 1st September 2009, the right of appeal has not been exercised, and the time to exercise that right of appeal has not expired prior to 1st September 2009, section 11 of the Tribunals, Courts and Enforcement Act 2007 (right to appeal to Upper Tribunal)

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(41) [S.I. 2007/2781](#).

(42) [1999 c. 29](#).

(43) [1981 c. 14](#).

(44) [1985 c. 67](#).

(45) [1995 c. 23](#).

(46) [2000 c. 38](#).

(47) [2008 c. 26](#).

(48) [S.I. 1992/3077](#).

(49) [S.I. 1999/1322](#).

(50) [S.I. 1999/3413](#).

(51) [S.I. 2001/3981](#).

shall apply as if the decision were a decision made on or after 1st September 2009 by the First-tier Tribunal, and any reference to the Transport Tribunal in enactments relating to such an appeal, express or otherwise, is to be taken as a reference to the First-tier Tribunal.

4. In respect of proceedings referred to in paragraph 1(3) where an appeal lies to a court from any decision made by the Transport Tribunal before 1st September 2009, the right of appeal has not been exercised, and the time to exercise that right of appeal has not expired prior to 1st September 2009, section 13 of the Tribunals, Courts and Enforcement Act 2007(52) (right to appeal to the Court of Appeal etc) shall apply as if the decision were a decision made on or after 1st September 2009 by the Upper Tribunal, and any reference to the Transport Tribunal in enactments relating to such an appeal, express or otherwise, is to be taken as a reference to the Upper Tribunal.

5. Any case to be remitted by a court on or after 1st September 2009 and which, if it had been remitted before 1st September 2009, would have been remitted to the Transport Tribunal, shall, in the case of proceedings under paragraph 1(1) or (2) be remitted to the First-tier Tribunal, and in all other cases be remitted to the Upper Tribunal.

6. Staff appointed to the Transport Tribunal before 1st September 2009 are, in addition, to be treated on and after that date, for the purpose of any proceedings referred to in paragraph 1, as if they had been appointed by the Lord Chancellor under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff and services).

7. In respect of proceedings referred to in paragraph 1, a decision made by the Transport Tribunal before 1st September 2009 is to be treated as a decision of the First-tier Tribunal or the Upper Tribunal, as the case may be, on or after 1st September 2009.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under the [Tribunals, Courts and Enforcement Act 2007](#) (“the 2007 Act”). Part 1 of the 2007 Act creates a new two tier tribunal structure; the First-tier Tribunal and the Upper Tribunal (“the new tribunals”) are established under section 3 of the 2007 Act. Order making powers are provided under Part 1 of the 2007 Act to enable functions of existing tribunals to be transferred into the new structure. This Order transfers some functions of the Transport Tribunal to the First-tier Tribunal and some to the Upper Tribunal. Some functions, including functions devolved under the Scotland Act 1998, will be retained by the Transport Tribunal.

### **Transfer of functions of tribunals**

Article 2 transfers the specified functions of the Transport Tribunal to the First-tier Tribunal and Upper Tribunal.

### **Additional offices to be held**

Article 3 provides for members of the Transport Tribunal to hold, in addition, the offices of transferred-in judge of the Upper Tribunal or transferred-in other member of the Upper Tribunal.

### **Consequential provisions**

Article 4(1) to (3) brings Schedules 1 to 3 into effect. Schedule 1 contains consequential amendments to primary legislation, Schedule 2 contains consequential amendments to secondary legislation and Schedule 3 contains consequential repeals and revocations of legislation. These amendments are made in consequence of the transfer of functions of the Transport Tribunal to the First-tier Tribunal and the Upper Tribunal.

### **Transitional and saving provisions**

Article 4(4) brings Schedule 3 into effect. Schedule 3 makes transitional and saving provisions for the treatment of cases which would previously have been dealt with by the Transport Tribunal following the coming into force of this Order.

The Schedule provides for proceedings which have been started in the Transport Tribunal to be transferred to the First-tier Tribunal or Upper Tribunal, as appropriate; new proceedings will be started in the First-tier Tribunal or the Upper Tribunal as the case may be:

- a hearing which has already been commenced but not completed will need to be completed in the First-tier Tribunal or Upper Tribunal, as the case may be, but comprised of the same members;
- directions and orders made prior to this Order coming into force will continue in force as if they were directions or orders of the First-tier Tribunal or Upper Tribunal, as the case may be;
- the First-tier Tribunal or Upper Tribunal will be able to disapply amendments to the rules or apply the Transport Tribunal Rules 2000 as they applied to the Transport Tribunal, to ensure that proceedings are dealt with fairly;
- time limits which begin to run before this Order comes into force continue to apply after the Order comes into force;
- the First-tier Tribunal and Upper Tribunal will only be able to make a costs order if and to the extent that the Transport Tribunal could have made such an order;
- appeals against the decisions of the Transport Tribunal which transfer to the First-tier Tribunal, if the appeal right has not been exercised before this Order comes into force and the time for doing so has not expired, are to be treated as appeals to the Upper Tribunal against decisions of the First-tier Tribunal;
- appeals against the decisions of the Transport Tribunal which transfer to the Upper Tribunal, if the appeal right has not been exercised before this Order comes into force and the time for doing so has not expired, are to be treated as appeals to the relevant Court against decisions of the Upper Tribunal.

A Regulatory Impact Assessment was prepared for the [Tribunals, Courts and Enforcement Act 2007](#). This can be found at:

<http://www.justice.gov.uk/publications/tribunalscourtsand enforcementact.htm>