

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

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

TRIBUNALS AND INQUIRIES

The Transfer of Functions of the Charity Tribunal 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(1), (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 a resolution of each House of Parliament in accordance with section 49(5) of that Act.

Citation and commencement

1. This Order may be cited as the Transfer of Functions of the Charity Tribunal Order 2009 and comes into force on 1st September 2009.

Transfer of functions

2.—(1) The functions of the Charity Tribunal are transferred to the First-tier Tribunal and the Upper Tribunal, with the question as to which one of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules.

(2) The Charity Tribunal is abolished.

Transfer of persons into the First-tier Tribunal and the Upper Tribunal

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

<i>(1) Office held</i>	<i>(2) Office to be held</i>
President of the Charity Tribunal appointed under paragraph 1(2)(a) of Schedule 1B to the Charities Act 1993(2)	Deputy judge of the Upper Tribunal and transferred-in judge of the First-tier Tribunal
A legal member of the Charity Tribunal appointed under paragraph 1(2)(b) of Schedule 1B to the Charities Act 1993	Transferred-in judge of the First-tier Tribunal
An ordinary member of the Charity Tribunal appointed under paragraph 1(2)(c) of Schedule 1B to the Charities Act 1993	Transferred-in other member of the First-tier 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 an amendment 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.

By authority of the Lord Chancellor

Date

Parliamentary Under-Secretary of State,
Ministry of Justice

(2) 1993 c. 10. Schedule 1B was inserted by Schedule 3 to the Charities Act 2006 (c.50).

SCHEDULE 1

Article 4(1)

Consequential amendments to primary legislation

House of Commons Disqualification Act 1975

1. In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975(3) (bodies of which all members are disqualified) omit the entry relating to the Charity Tribunal.

Northern Ireland Assembly Disqualification Act 1975

2. In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975(4) (bodies of which all members are disqualified) omit the entry relating to the Charity Tribunal.

Courts and Legal Services Act 1990

3. In Schedule 11 to the Courts and Legal Services Act 1990(5) (judges etc barred from legal practice) omit the entry relating to the President or other member of the Charity Tribunal.

Tribunals and Inquiries Act 1992

4. In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992(6) (tribunals under direct supervision of Council) omit the entry at paragraph 6A relating to charities.

Judicial Pensions and Retirement Act 1993

5. In Part 2 of Schedule 1 to the Judicial Pensions and Retirement Act 1993(7) (other appointments – members of Tribunals) omit the entry relating to the President of the Charity Tribunal.

Charities Act 1993

6. The Charities Act 1993(8) is amended as follows.

7. In the heading for Part 1A omit “Charity”.

8. In section 2A (the Charity Tribunal)—

(a) in the heading omit “Charity”;

(b) omit subsections (1) to (3); and

(c) in subsection (5) for “section 2B below and rules made under that section” substitute “rules made under section 2B(2) and Tribunal Procedure Rules”.

9. In section 2B (practice and procedure)—

(3) 1975 c.24. The entry in Part 2 of Schedule 1 relating to the Charity Tribunal was inserted by paragraph 2 of Schedule 3 to the Charities Act 2006 (c.50).

(4) 1975 c.25. The entry in Part 2 of Schedule 1 relating to the Charity Tribunal was inserted by paragraph 3 of Schedule 3 to the Charities Act 2006 (c.50).

(5) 1990 c.41. The entry in Schedule 11 relating to the Charity Tribunal was inserted by paragraph 4 of Schedule 3 to the Charities Act 2006 (c.50).

(6) 1992 c.53. Paragraph 6A was inserted by paragraph 5 of Schedule 3 to the Charities Act 2006 (c.50).

(7) 1993 c.8. The entry relating to the President of the Charity Tribunal was inserted by article 2 of the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2007 (S.I. 2007/675).

(8) 1993 c.10. Sections 2A to 2D, and the definition of “the Tribunal” in section 97(1), were inserted by section 8(1) of, and paragraph 174 of Schedule 8 to, the Charities Act 2006 (c.50). Schedules 1B to 1D were inserted by Schedules 3 and 4 of the 2006 Act. Schedule 1B was amended by paragraph 23 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (a) for subsections (1) to (3) substitute—
 - “(1) This section applies in relation to appeals, applications or references to the Tribunal which are mentioned in section 2A(4).
 - (2) The Lord Chancellor may make rules—
 - (a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);
 - (b) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission.
 - (3) Tribunal Procedure Rules may make any other provision regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it.”;
 - (b) in subsection (4)—
 - (i) for “subsection (1)(a) or (b)” substitute “subsection (2) or (3)”;
 - (ii) after paragraph (a) insert “or”; and
 - (iii) omit paragraph (b) and the following “or”; and
 - (c) omit subsections (5) to (7).
- 10.** In section 2C (appeal from Tribunal)—
- (a) omit subsections (1), (2) and (4);
 - (b) in subsection (3)—
 - (i) for “this section” substitute “section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007(9)”; and
 - (ii) for “High Court” substitute “tribunal or court hearing the appeal”; and
 - (c) in subsection (5)—
 - (i) for “subsection (1) above” substitute “sections 11(2) and 13(2) of the Tribunals, Courts and Enforcement Act 2007”;
 - (ii) in paragraph (a) for “all proceedings before the Tribunal” substitute “cases before the Tribunal in respect of any such appeal, application or reference as is mentioned in section 2A(4)”; and
 - (iii) omit paragraph (b) (and the “and” immediately before it).
- 11.** In section 2D (intervention by Attorney General)—
- (a) in subsection (2) for the words from the beginning to “the court” substitute “The appropriate body”;
 - (b) in subsections (3) and (4)(b) (in both places) for “Tribunal or court” substitute “appropriate body”;
 - (c) in subsection (5) for “the Tribunal or court has given a direction” substitute “a direction is given”; and
 - (d) at the end insert—
 - “(6) In this section “the appropriate body” means the Tribunal or, in the case of an appeal from the Tribunal, the tribunal or court hearing the appeal.”.
- 12.** In section 97(1) (general interpretation), for the definition of “the Tribunal” substitute—

(9) 2007 c. 15.

““the Tribunal”, in relation to any appeal, application or reference, means—

- (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the appeal, application or reference; or
- (b) the First-tier Tribunal, in any other case;”.

13. Omit Schedule 1B (the Charity Tribunal).

14. In Schedule 1C (appeals and applications to Charity Tribunal) in the heading omit “Charity”.

15. In Schedule 1D (references to Charity Tribunal)—

- (a) in the heading omit “Charity”; and
- (b) omit paragraph 6(3).

Constitutional Reform Act 2005

16. In Part 3 of Schedule 14 to the Constitutional Reform Act 2005⁽¹⁰⁾ (appointments by the Lord Chancellor: offices to which paragraph 2(2)(d) of Schedule 12 applies) omit the entries relating to—

- (a) the President of the Charity Tribunal;
- (b) a legal member of the Charity Tribunal; and
- (c) an ordinary member of the Charity Tribunal.

Charities Act 2006

17. In section 57 of the Charities Act 2006⁽¹¹⁾ (appeals against decisions of the Commission)—

- (a) in subsection (1) for “Charity Tribunal (“the Tribunal”)” substitute “Tribunal”; and
- (b) after subsection (7) insert—

“(8) In this section “the Tribunal”, in relation to any appeal under this section, means—

- (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the appeal; or
- (b) the First-tier Tribunal, in any other case;”.

SCHEDULE 2

Article 4(2)

Consequential amendment to secondary legislation

Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007

1. In article 2 of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007⁽¹²⁾ (list of tribunals) omit the entry relating to the Charity Tribunal.

⁽¹⁰⁾ 2005 c.4. The entries relating to the Charity Tribunal were inserted by paragraph 208 of Schedule 8 to the Charities Act 2006 (c.50).

⁽¹¹⁾ 2006 c.50.

⁽¹²⁾ S.I. 2007/2951.

SCHEDULE 3

Article 4(3)

Repeals and revocations

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Act or instrument repealed or revoked</i>	<i>Reference</i>	<i>Extent of repeal or revocation</i>
Charities Act 2006	2006 c.50	Section 8(2), Schedule 3 and paragraph 208 of Schedule 8
Tribunals, Courts and Enforcement Act 2007	2007 c.15	Paragraph 23 of Schedule 10
Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2007	S.I. 2007/675	Article 2
Charity Tribunal Rules 2008	S.I. 2008/221	The whole of the Rules

SCHEDULE 4

Article 4(4)

Transitional and saving provisions

Transitional and saving provisions

1. Any proceedings before the Charity Tribunal which are pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the First-tier Tribunal.

2.—(1) The following sub-paragraphs apply where proceedings are continued in the First-tier 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 must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The First-tier Tribunal 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.

(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. Where an appeal lies to a court from any decision made by the Charity Tribunal before 1st September 2009, that 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(13) (right to appeal to Upper Tribunal) 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 Charity Tribunal in an enactment relating to such an appeal, express or otherwise, is to be taken as a reference to the First-tier Tribunal.

4. 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 Charity Tribunal, shall be remitted to the First-tier Tribunal.

5. Staff appointed to the Charity Tribunal before 1st September 2009 are to be treated on and after that date, for the purpose of any enactment, 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).

6. A decision made by the Charity Tribunal before 1st September 2009 is to be treated as a decision of the First-tier Tribunal on or after 1st September 2009.

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 the functions of existing tribunals to be transferred into the new structure. This Order transfers the functions of the Charity Tribunal to the First-tier Tribunal and the Upper Tribunal, with the question as to which one of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules.

Transfer of functions of tribunals

Article 2 transfers the functions of the Charity Tribunal to the First-tier Tribunal and Upper Tribunal and abolishes the Charity Tribunal.

Transfer of members of tribunals

Article 3 provides for members of the Charity Tribunal to hold the offices of deputy judge of the Upper Tribunal, transferred-in judge of the First-tier Tribunal, or transferred-in other member of the First-tier Tribunal.

(13) 2007 c. 15.

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 a consequential amendment to secondary legislation and Schedule 3 contains consequential repeals and revocations of legislation. These amendments, repeals and revocations are made in consequence of the transfer of the functions of the Charity Tribunal to the First-tier Tribunal and the Upper Tribunal.

Transitional and saving provisions

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

The Schedule provides for proceedings which have been started in the Charity Tribunal to be transferred to the First-tier Tribunal; new proceedings will be started in the First-tier Tribunal or the Upper Tribunal as determined under Tribunal Procedure Rules. In transferred cases the following provisions apply:

- a hearing which has already been commenced but not completed will need to be completed in the First-tier Tribunal 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;
- the First-tier Tribunal will be able to disapply amendments to the rules or apply the Charity Tribunal Rules 2008 as they applied to the Charity 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; and
- the First-tier Tribunal will only be able to make a costs order if and to the extent that the Charity Tribunal could have made such an order.

Appeals against the decisions of the Charity 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 against the decisions of the First-tier 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/tribunalscourtsandenforcementact.htm>