

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 (Estate Agents Appeals
and Additional Scheduled Tribunal) Order 2009**

Made - - - - *****

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(2) and (9), 37(1)(a) and 38 of 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.—(1) This Order may be cited as the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 and, subject to paragraph (2), comes into force on 1st September 2009.

(2) Article 4 comes into force on the day after the day on which this instrument is made.

Transfer of function

2. The function of the Secretary of State to decide appeals under section 7(1) of the Estate Agents Act 1979⁽²⁾ is transferred to the First-tier Tribunal.

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.

(1) 2007 c. 15.
(2) 1979 c. 38.

<i>(1) Office held</i>	<i>(2) Office to be held</i>
Person appointed to hear an appeal on behalf of the Secretary of State under regulation 19(1) of Estate Agents (Appeals) Regulations 1981 ⁽³⁾ at any time after 2005, and who is on the panel of presiding members	Transferred-in judge of the First-tier Tribunal
Person appointed to hear an appeal on behalf of the Secretary of State under regulation 19(1) of Estate Agents (Appeals) Regulations 1981 at any time after 2005, and who is on the panel of legal members	Transferred-in judge of the First-tier Tribunal
Person appointed to hear an appeal on behalf of the Secretary of State under regulation 19(1) of Estate Agents (Appeals) Regulations 1981 at any time after 2005, and who is on the panel of other members	Transferred-in other member of the First-tier Tribunal

Addition to the list of tribunals in Schedule 6

4. In Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 (tribunals for the purposes of section 30), insert the following entry at the appropriate place—

“Panel	Section 189(6) of the Greater London Authority Act 1999 ⁽⁴⁾
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Consequential and transitional provisions

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

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

(3) Schedule 3 contains transitional and saving provisions.

By authority of the Lord Chancellor

Parliamentary Under-Secretary of State
 Ministry of Justice

Date

⁽³⁾ S.I. 1981/1518.

⁽⁴⁾ 1999 c. 29. Section 189(6) was substituted by section 267(4) of the Transport Act 2000 (c. 38).

SCHEDULE 1

Article 5(1)

Consequential amendments to primary legislation

Parliamentary Commissioner Act 1967

1. In Schedule 4 to the Parliamentary Commissioner Act 1967⁽⁵⁾ (relevant tribunals for the purposes of section 5(7)) omit the entry relating to persons hearing estate agents' appeals appointed under regulation 19 of the Estate Agents (Appeals) Regulations 1981.

Estate Agents Act 1979

2. The Estate Agents Act 1979⁽⁶⁾ is amended as follows.
3. In section 7 (appeals)—
 - (a) in subsection (1) for “Secretary of State” substitute “First-tier Tribunal”;
 - (b) in subsection (2)—
 - (i) for “Secretary of State” substitute “First-tier Tribunal”;
 - (ii) for “he” substitute “it”; and
 - (iii) omit the words from “, including” to the end; and
 - (c) omit subsections (3) to (6).

SCHEDULE 2

Article 5(2)

Repeals and revocations

<i>Act or instrument repealed or revoked</i>	<i>Reference</i>	<i>Extent of repeal or revocation</i>
Constitutional Reform Act 2005	2005 c. 4	Paragraph 31 of Schedule 9
Estate Agents (Appeals) Regulations 1981	S.I. 1981/1518	The whole of the Regulations

SCHEDULE 3

Article 5(3)

Transitional and saving provisions

Transitional and saving provisions

4. Any proceedings before the Secretary of State to decide an appeal under section 7(1) of the Estate Agents Act 1979 which are pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the First-tier Tribunal.

(5) [1967 c.13](#). Schedule 4 was inserted by section 1(3) of the Parliamentary Commissioner Act 1994 ([c.14](#)) and substituted by article 3 of, and Schedule 2 to, the Parliamentary Commissioners Order 2007 ([S.I. 2007/3470](#)).

(6) [1979 c.38](#). Section 7(6) is amended from a date to be appointed by section 40(4) of, and paragraph 31 of Part 1 of Schedule 9 to, the Constitutional Reform Act [2005 \(c.4\)](#).

5.—(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 appointed by the Secretary of State to hear the appeal on his behalf.

(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 regulating practice or procedure which applied to the proceedings before 1st September 2009; or
- (b) disapply provisions of Tribunal Procedure Rules.

(4) 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.

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

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

6. Where an appeal lies to a court from any decision made by the Secretary of State on an appeal under section 7(1) of the Estate Agents Act 1979 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⁽⁷⁾ (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 Secretary of State in respect of the function of deciding appeals under section 7(1) of the Estate Agents Act 1979, or to any person by whom such appeals are to be heard on behalf of the Secretary of State, in an enactment relating to such an appeal, express or otherwise, is to be taken as a reference to the First-tier Tribunal.

7. 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 Secretary of State shall be remitted to the First-tier Tribunal.

8. Staff appointed in relation to the administration of appeals under section 7(1) of the Estate Agents Act 1979 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).

9. A decision made by the Secretary of State on an appeal under section 7(1) of the Estate Agents Act 1979⁽⁸⁾ before 1st September 2009 is to be treated as a decision of the First-tier Tribunal on or after 1st September 2009.

⁽⁷⁾ 2007 c. 15.

⁽⁸⁾ 1979 c. 38.

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 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 function of the Secretary of State to decide appeals under section 7(1) of the Estate Agents Act 1979 (“Estate Agents Appeals”) to the First-tier Tribunal.

Transfer of function

Article 2 transfers the function of the Secretary of State to decide Estate Agents Appeals to the First-tier Tribunal.

Transfer of members of tribunals

Article 3 provides for persons appointed by the Secretary of State to decide Estate Agents Appeals on his behalf (under regulation 19(1) of the Estate Agents (Appeals) Regulations 1981⁽⁹⁾) to hold the offices of transferred-in judge of the First-tier Tribunal or transferred-in other member of the First-tier Tribunal.

Amendment to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007

This Order adds a panel referred to in section 189(6) of the Greater London Authority Act 1999 to the table in Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007, bringing such a panel within the scope of the Lord Chancellor’s power to transfer tribunal functions to the First-tier Tribunal or the Upper Tribunal.

Consequential provisions

Article 5(1) and (2) brings Schedules 1 and 2 into effect. Schedule 1 contains amendments to primary legislation in consequence of the transfer of the function of the Secretary of State to decide Estate Agents Appeals to the First-tier Tribunal, and Schedule 2 contains repeals and revocations of legislation in consequence of those amendments.

Transitional and saving provisions

Article 5(3) brings Schedule 3 into effect. Schedule 4 makes transitional and saving provisions for the treatment of Estate Agents Appeals, which would previously have been dealt with by persons appointed by the Secretary of State, following the coming into force of this Order.

The Schedule provides for proceedings which have started at the date of transfer to the First-tier Tribunal; new proceedings will be started in the First-tier Tribunal. 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 persons;

(9) [S.I. 1981/1518](#).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 No. 1836

- 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 Tribunal Procedure Rules, or apply provisions of the Estate Agent (Appeals) Regulations 1981, to Estate Agents Appeals as they applied to such appeals prior to transfer, 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 Secretary of State could have made such an order.

Appeals against the decisions of the Secretary of State on Estate Agents Appeals, 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>