

## 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 Lands Tribunal to the Upper Tribunal, and in addition contains various minor, consequential and transitional provisions, as explained below.

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

Article 2 transfers the functions of the Lands Tribunal to the Upper Tribunal and abolishes the Lands Tribunal.

### **Transfer of members of tribunals**

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

### **Transfer of Rules**

Article 4 provides that the current procedural rules for the Lands Tribunal, the Lands Tribunal Rules 1996, become Tribunal Procedure Rules.

### **Consequential provisions**

Article 5(1) to (5) brings Schedules 1 to 4 into effect. Schedule 1 contains consequential amendments to primary legislation, Schedule 2 contains consequential amendments to secondary legislation, Schedule 3 contains consequential amendments to Church of England Measures, and Schedule 4 contains consequential repeals and revocations of legislation. The vast majority of these amendments, repeals and revocations are made in consequence of the transfer of the functions of the Lands Tribunal to the Upper Tribunal.

In addition, various amendments to legislation are made which do not relate to the transfer of the Lands Tribunal. These are as follows:

Paragraph 161 of Schedule 1 amends the Mental Health Act 1983 in order to ensure that a patient who withdraws their appeal to the First-tier Tribunal can remake that appeal. This amendment relates to the transfer of the functions of Mental Health Review Tribunals in England to the First-tier Tribunal, which was effected by the Transfer of Tribunal Functions Order 2008.

Paragraph 162 of Schedule 1 amends the same Act to allow members of the First-tier Tribunal who may hear mental health cases to sit in the Mental Health Review Tribunal for Wales. This preserves the position under paragraph 5 of Schedule 2 to the 1993 Act before the abolition of the Mental Health Review Tribunal for England and the transfer of its members to the First-tier Tribunal and Upper Tribunal under the Transfer of Tribunal Functions Order 2008.

Paragraph 226 of Schedule 1 amends the Child Support Act 1991 to correct an error in the Transfer of Tribunal Functions Order 2008, by transferring functions which were incorrectly transferred from

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the Lord Chancellor to the First Minister and deputy First Minister of Northern Ireland back to the Lord Chancellor.

Paragraph 245 of Schedule 1 amends the Tribunals and Inquiries Act 1992 to remove a reference to the VAT and Duties Tribunal, which was abolished by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009.

Paragraph 288 of Schedule 1 amends the Criminal Justice and Immigration Act 2008 to remove a reference to rules made under the Immigration and Asylum Act 1999, which rules were revoked by the Transfer of Tribunal Functions Order 2008.

Paragraph 54 of Schedule 2 removes a reference to the Council on Tribunals which was abolished under section 45 of the 2007 Act.

Paragraph 121(a), (b) and (d) to (f) of Schedule 2 amends the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 in order to remove references to tax tribunals which were abolished by the 2007 Act and the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009.

Paragraph 126 of Schedule 2 amends the Judicial Appointments Order 2008 by adding to the list of offices for which Fellows of the Institute of Legal Executives hold a relevant qualification for the purposes of the judicial-appointment eligibility condition in section 50 of the Tribunals, Courts and Enforcement Act 2007. The office that is added is that of adjudicator appointed under regulation 9 of the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008. Section 81(2)(a) of the Traffic Management Act 2004 provides that a person must satisfy the judicial-appointment eligibility condition on a 5-year basis to qualify for appointment as an adjudicator.

### **Transitional and saving provisions**

Article 5(6) brings Schedule 5 into effect. Schedule 5 makes transitional and saving provisions for the treatment of cases which would previously have been dealt with by the Lands Tribunal, and onward appeals from that Tribunal, following the coming into force of this Order.

The Schedule provides for proceedings which have been started in the Lands Tribunal to be transferred to the Upper Tribunal; new proceedings will be started in the Upper 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 Upper 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 Upper Tribunal;
- the Lands Tribunal Rules 2006 are amended and become Tribunal Procedure Rules by virtue of article 4 and Schedule 2. The amended rules will apply to all cases from 1st June 2009, but the Upper Tribunal will be able to disapply amendments to the rules or apply the unamended rules (including provisions in primary legislation) as they applied to the Lands 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 Upper Tribunal will only be able to make a costs order if and to the extent that the Lands Tribunal could have made such an order.
- Appeals against the decisions of the Lands Tribunals, 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 Upper Tribunal.

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

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

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