
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⁽¹⁾) 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;

(1) [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>