



# Tribunals, Courts and Enforcement Act 2007

## 2007 CHAPTER 15

### PART 1

#### TRIBUNALS AND INQUIRIES

VALID FROM 19/09/2007

### CHAPTER 3

#### TRANSFER OF TRIBUNAL FUNCTIONS

#### **30 Transfer of functions of certain tribunals**

- (1) The Lord Chancellor may by order provide for a function of a scheduled tribunal to be transferred—
- (a) to the First-tier Tribunal,
  - (b) to the Upper Tribunal,
  - (c) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order,
  - (d) to the First-tier Tribunal to the extent specified in the order and to the Upper Tribunal to the extent so specified,
  - (e) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules,
  - (f) to an employment tribunal,
  - (g) to the Employment Appeal Tribunal,

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- (h) to an employment tribunal and the Employment Appeal Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order, or
  - (i) to an employment tribunal to the extent specified in the order and to the Employment Appeal Tribunal to the extent so specified.
- (2) In subsection (1) “scheduled tribunal” means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.
- (3) The Lord Chancellor may, as respects a function transferred under subsection (1) or this subsection, by order provide for the function to be further transferred as mentioned in any of paragraphs (a) to (i) of subsection (1).
- (4) An order under subsection (1) or (3) may include provision for the purposes of or in consequence of, or for giving full effect to, a transfer under that subsection.
- (5) A function of a tribunal may not be transferred under subsection (1) or (3) if, or to the extent that, the provision conferring the function—
- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
  - (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.
- (6) Subsection (5) does not apply to—
- (a) the Secretary of State's function of deciding appeals under section 41 of the Consumer Credit Act 1974 (c. 39),
  - (b) functions of the Consumer Credit Appeals Tribunal,
  - (c) the Secretary of State's function of deciding appeals under section 7(1) of the Estate Agents Act 1979 (c. 38), or
  - (d) functions of an adjudicator under section 5 of the Criminal Injuries Compensation Act 1995 (c. 53) (but see subsection (7)).
- (7) Functions of an adjudicator under section 5 of the Criminal Injuries Compensation Act 1995 (c. 53), so far as they relate to Scotland, may be transferred under subsection (1) or (3) only with the consent of the Scottish Ministers.
- (8) A function of a tribunal may be transferred under subsection (1) or (3) only with the consent of the Welsh Ministers if any relevant function is exercisable in relation to the tribunal by the Welsh Ministers (whether by the Welsh Ministers alone, or by the Welsh Ministers jointly or concurrently with any other person).
- (9) In subsection (8) “relevant function”, in relation to a tribunal, means a function which relates—
- (a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or
  - (b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.

### **31 Transfers under section 30: supplementary powers**

- (1) The Lord Chancellor may by order make provision for abolishing the tribunal by whom a function transferred under section 30(1) is exercisable immediately before its transfer.

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- (2) The Lord Chancellor may by order make provision, where functions of a tribunal are transferred under section 30(1), for a person—
- who is the tribunal (but is not the Secretary of State), or
  - who is a member of the tribunal, or
  - who is an authorised decision-maker for the tribunal,
- to (instead or in addition) be the holder of an office specified in subsection (3).
- (3) Those offices are—
- transferred-in judge of the First-tier Tribunal,
  - transferred-in other member of the First-tier Tribunal,
  - transferred-in judge of the Upper Tribunal,
  - transferred-in other member of the Upper Tribunal, and
  - deputy judge of the Upper Tribunal.
- (4) Where functions of a tribunal are transferred under section 30(1), the Lord Chancellor must exercise the power under subsection (2) so as to secure that each person who immediately before the end of the tribunal's life—
- is the tribunal,
  - is a member of the tribunal, or
  - is an authorised decision-maker for the tribunal,
- becomes the holder of an office specified in subsection (3) with effect from the end of the tribunal's life (if the person is not then already the holder of such an office).
- (5) Subsection (4) does not apply in relation to a person—
- by virtue of the person's being the Secretary of State, or
  - by virtue of the person's being a Commissioner for the general purposes of the income tax;
- and a reference in subsection (4) to the end of a tribunal's life is to when the tribunal is abolished or (without being abolished) comes to have no functions.
- (6) For the purposes of this section, a person is an “authorised decision-maker” for a tribunal if—
- the tribunal is listed in column 1 of an entry in the following Table, and
  - the person is of the description specified in column 2 of that entry.

**(1)*****Tribunal***

Adjudicator to Her Majesty's Land Registry

The Secretary of State as respects his function of deciding appeals under section 41 of the Consumer Credit Act 1974 (c. 39)

The Secretary of State as respects his function of deciding appeals under

**(2)*****Authorised decision-maker***

Member of the Adjudicator's staff who is authorised by the Adjudicator to carry out functions of the Adjudicator which are not of an administrative character

Person who is a member of a panel under regulation 24 of the Consumer Credit Licensing (Appeals) Regulations 1998 (S.I. 1998/1203)

Person appointed, at any time after 2005, under regulation 19(1) of the

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section 7(1) of the Estate Agents Act 1979 (c. 38)	Estate Agents (Appeals) Regulations 1981 (S.I. 1981/1518) to hear an appeal on behalf of the Secretary of State
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- (7) Where a function of a tribunal is transferred under section 30(1), the Lord Chancellor may by order provide for procedural rules in force immediately before the transfer to have effect, or to have effect with appropriate modifications, after the transfer (and, accordingly, to be capable of being varied or revoked) as if they were—
- (a) Tribunal Procedure Rules, or
  - (b) employment tribunal procedure regulations, or Appeal Tribunal procedure rules, within the meaning given by section 42(1) of the Employment Tribunals Act 1996 (c. 17).
- (8) In subsection (7)—
- “procedural rules” means provision (whether called rules or not)—
- (a) regulating practice or procedure before the tribunal, and
  - (b) applying for purposes connected with the exercise of the function;
- “appropriate modifications” means modifications (including additions and omissions) that appear to the Lord Chancellor to be necessary to secure, or expedient in connection with securing, that the procedural rules apply in relation to the exercise of the function after the transfer.
- (9) The Lord Chancellor may, in connection with provision made by order under section 30 or the preceding provisions of this section, make by order such incidental, supplemental, transitional or consequential provision, or provision for savings, as the Lord Chancellor thinks fit, including provision applying only in relation to cases selected by a member—
- (a) of the First-tier Tribunal,
  - (b) of the Upper Tribunal,
  - (c) of the Employment Appeal Tribunal, or
  - (d) of a panel of members of employment tribunals.
- (10) Subsections (1), (2) and (7) are not to be taken as prejudicing the generality of subsection (9).

## **32 Power to provide for appeal to Upper Tribunal from tribunals in Wales**

- (1) Subsection (2) applies if—
- (a) a function is transferred under section 30(1)(a), (c), (d) or (e) in relation to England but is not transferred under section 30(1) in relation to Wales, or
  - (b) a function that is not exercisable in relation to Wales is transferred under section 30(1)(a), (c), (d) or (e) in relation to England and, although there is a corresponding function that is exercisable in relation to Wales, that corresponding function is not transferred under section 30(1) in relation to Wales.
- (2) The Lord Chancellor may by order—
- (a) provide for an appeal against a decision to be made to the Upper Tribunal instead of to the court to which an appeal would otherwise fall to be made where the decision is made in exercising, in relation to Wales, the function mentioned in subsection (1)(a) or (as the case may be) the corresponding function mentioned in subsection (1)(b);

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- (b) provide for a reference of any matter to be made to the Upper Tribunal instead of to the court to which a reference would otherwise fall to be made where the matter arises in exercising, in relation to Wales, the function mentioned in subsection (1)(a) or (as the case may be) the corresponding function mentioned in subsection (1)(b).
- (3) The Lord Chancellor may by order provide for an appeal against a decision of a scheduled tribunal to be made to the Upper Tribunal, instead of to the court to which an appeal would otherwise fall to be made, where the decision is made by the tribunal in exercising a function in relation to Wales.
- (4) In subsection (3) “scheduled tribunal” means a tribunal in a list in Schedule 6 that has effect for the purposes of that subsection.
- (5) An order under subsection (2) or (3)—
  - (a) may include provision for the purposes of or in consequence of, or for giving full effect to, provision made by the order;
  - (b) may include such incidental, supplemental, transitional or consequential provision or savings as the Lord Chancellor thinks fit.

### **33 Power to provide for appeal to Upper Tribunal from tribunals in Scotland**

- (1) Subsection (2) applies if—
  - (a) a function is transferred under section 30(1)(a), (c), (d) or (e) in relation to England (whether or not also in relation to Wales) but is not transferred under section 30(1) in relation to Scotland,
  - (b) an appeal may be made to the Upper Tribunal against any decision, or any decision of a particular description, made in exercising the transferred function in relation to England, and
  - (c) no appeal may be made against a corresponding decision made in exercising the function in relation to Scotland.
- (2) The Lord Chancellor may by order provide for an appeal against any such corresponding decision to be made to the Upper Tribunal.
- (3) An order under subsection (2)—
  - (a) may include provision for the purposes of or in consequence of, or for giving full effect to, provision made by the order;
  - (b) may include such incidental, supplemental, transitional or consequential provision or savings as the Lord Chancellor thinks fit.
- (4) An order under subsection (2) does not cease to have effect, and power to vary or revoke the order does not cease to be exercisable, just because either or each of the conditions in subsection (1)(b) and (c) ceases to be satisfied in relation to the function and decisions concerned.

### **34 Power to provide for appeal to Upper Tribunal from tribunals in Northern Ireland**

- (1) Subsection (2) applies if—
  - (a) a function is transferred under section 30(1)(a), (c), (d) or (e) in relation to England (whether or not also in relation to Wales) but is not transferred under section 30(1) in relation to Northern Ireland,

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- (b) an appeal may be made to the Upper Tribunal against any decision, or any decision of a particular description, made in exercising the transferred function in relation to England, and
  - (c) no appeal may be made against a corresponding decision made in exercising the function in relation to Northern Ireland.
- (2) The Lord Chancellor may by order provide for an appeal against any such corresponding decision to be made to the Upper Tribunal.
- (3) An order under subsection (2)—
- (a) may include provision for the purposes of or in consequence of, or for giving full effect to, provision made by the order;
  - (b) may include such incidental, supplemental, transitional or consequential provision or savings as the Lord Chancellor thinks fit.
- (4) An order under subsection (2) does not cease to have effect, and power to vary or revoke the order does not cease to be exercisable, just because either or each of the conditions in subsection (1)(b) and (c) ceases to be satisfied in relation to the function and decisions concerned.

### **35 Transfer of Ministerial responsibilities for certain tribunals**

- (1) The Lord Chancellor may by order—
- (a) transfer any relevant function, so far as that function is exercisable by a Minister of the Crown—
    - (i) to the Lord Chancellor, or
    - (ii) to two (or more) Ministers of the Crown of whom one is the Lord Chancellor;
  - (b) provide for any relevant function that is exercisable by a Minister of the Crown other than the Lord Chancellor to be exercisable by the other Minister of the Crown concurrently with the Lord Chancellor;
  - (c) provide for any relevant function that is exercisable by the Lord Chancellor concurrently with another Minister of the Crown to cease to be exercisable by the other Minister of the Crown.
- (2) In this section “relevant function” means a function, in relation to a scheduled tribunal, which relates—
- (a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or
  - (b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.
- (3) In subsection (2) “scheduled tribunal” means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.
- (4) A relevant function may not be transferred under subsection (1) if, or to the extent that, the provision conferring the function—
- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
  - (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.

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- (5) Subsection (4) does not apply to any relevant function of the Secretary of State—
- (a) under section 41 of the Consumer Credit Act 1974 (c. 39) (appeals), or
  - (b) under section 7 of the Estate Agents Act 1979 (c. 38) (appeals).
- (6) Any reference in subsection (1) to a Minister of the Crown includes a reference to a Minister of the Crown acting jointly.
- (7) An order under subsection (1)—
- (a) may relate to a function either wholly or in cases (including cases framed by reference to areas) specified in the order;
  - (b) may include provision for the purposes of, or in consequence of, or for giving full effect to, the transfer or (as the case may be) other change as regards exercise;
  - (c) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit;
  - (d) may include provision for the transfer of any property, rights or liabilities of the person who loses functions or whose functions become shared with the Lord Chancellor.
- (8) An order under subsection (1), so far as it—
- (a) provides under paragraph (a) for the transfer of a function, or
  - (b) provides under paragraph (b) for a function to become exercisable by the Lord Chancellor, or
  - (c) provides under paragraph (c) for a function to cease to be exercisable by a Minister of the Crown other than the Lord Chancellor,
- may not, after that transfer or other change has taken place, be revoked by another order under that subsection.
- (9) Section 1 of the 1975 Act (power to transfer Ministerial functions) does not apply to a function of the Lord Chancellor—
- (a) so far as it is a function transferred to the Lord Chancellor under subsection (1)(a),
  - (b) so far as it is a function exercisable by the Lord Chancellor as a result of provision under subsection (1)(b), or
  - (c) so far as it is a function that has become exercisable by the Lord Chancellor alone as a result of provision under subsection (1)(c).
- (10) In this section—
- “Minister of the Crown” has the meaning given by section 8(1) of the 1975 Act but includes the Commissioners for Her Majesty’s Revenue and Customs;
- “the 1975 Act” means the Ministers of the Crown Act 1975 (c. 26).

### **36 Transfer of powers to make procedural rules for certain tribunals**

- (1) The Lord Chancellor may by order transfer any power to make procedural rules for a scheduled tribunal to—
- (a) himself, or
  - (b) the Tribunal Procedure Committee.

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- (2) A power may not be transferred under subsection (1) if, or to the extent that, the provision conferring the power—
- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
  - (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.
- (3) Subsection (2) does not apply to—
- (a) power conferred by section 40A(3) or 41(2) of the Consumer Credit Act 1974 (c. 39) (power to make provision with respect to appeals), or
  - (b) power conferred by section 7(3) of the Estate Agents Act 1979 (c. 38) (duty of Secretary of State to make regulations with respect to appeals under section 7(1) of that Act).
- (4) An order under subsection (1)(b)—
- (a) may not alter any parliamentary procedure relating to the making of the procedural rules concerned, but
  - (b) may otherwise include provision for the purpose of assimilating the procedure for making them to the procedure for making Tribunal Procedure Rules.
- (5) An order under subsection (1)(b) may include provision requiring the Tribunal Procedure Committee to make procedural rules for purposes notified to it by the Lord Chancellor.
- (6) An order under this section—
- (a) may relate to a power either wholly or in cases (including cases framed by reference to areas) specified in the order;
  - (b) may include provision for the purposes of or in consequence of, or for giving full effect to, the transfer;
  - (c) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit.
- (7) A power to make procedural rules for a tribunal that is exercisable by the Tribunal Procedure Committee by virtue of an order under this section must be exercised by the committee with a view to securing—
- (a) that the system for deciding matters within the jurisdiction of that tribunal is accessible and fair,
  - (b) that proceedings before that tribunal are handled quickly and efficiently,
  - (c) that the rules are both simple and simply expressed, and
  - (d) that the rules where appropriate confer on persons who are, or who are members of, that tribunal responsibility for ensuring that proceedings before that tribunal are handled quickly and efficiently.
- (8) In this section—
- “procedural rules”, in relation to a tribunal, means provision (whether called rules or not) regulating practice or procedure before the tribunal;
- “scheduled tribunal” means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.



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### **37 Power to amend lists of tribunals in Schedule 6**

- (1) The Lord Chancellor may by order amend Schedule 6—
  - (a) for the purpose of adding a tribunal to a list in the Schedule;
  - (b) for the purpose of removing a tribunal from a list in the Schedule;
  - (c) for the purpose of removing a list from the Schedule;
  - (d) for the purpose of adding to the Schedule a list of tribunals that has effect for the purposes of any one or more of sections 30, 32(3), 35 and 36.
- (2) The following rules apply to the exercise of power under subsection (1)—
  - (a) a tribunal may not be added to a list, or be in an added list, if the tribunal is established otherwise than by or under an enactment;
  - (b) a tribunal established by an enactment passed or made after the last day of the Session in which this Act is passed must not be added to a list, or be in an added list, that has effect for the purposes of section 30;
  - (c) if any relevant function is exercisable in relation to a tribunal by the Welsh Ministers (whether by the Welsh Ministers alone, or by the Welsh Ministers jointly or concurrently with any other person), the tribunal may be added to a list, or be in an added list, only with the consent of the Welsh Ministers;
  - (d) a tribunal may be in more than one list.
- (3) In subsection (2)(c) “relevant function”, in relation to a tribunal, means a function which relates—
  - (a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or
  - (b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.
- (4) In subsection (1) “tribunal” does not include an ordinary court of law.
- (5) In this section “enactment” means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

### **38 Orders under sections 30 to 36: supplementary**

- (1) Provision in an order under any of sections 30 to 36 may take the form of amendments, repeals or revocations of enactments.
- (2) In this section “enactment” means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).
- (3) Any power to extend enactments to a territory outside the United Kingdom shall have effect as if it included—
  - (a) power to extend those enactments as they have effect with any amendments and repeals made in them by orders under any of sections 30 to 36, and
  - (b) power to extend those enactments as if any amendments and repeals made in them under those sections had not been made.

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