

**EXPLANATORY MEMORANDUM TO  
TRANSFER OF FUNCTIONS (ASYLUM SUPPORT ADJUDICATORS) ORDER**

**2007 No. 275**

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 Responsibility for the administration of the Asylum Support Adjudicators (ASA) will transfer from the Secretary of State for the Home Department to the Lord Chancellor on 2 April 2007.
  - 2.2 This Order transfers to the Lord Chancellor certain statutory functions conferred on the Secretary of State by the Immigration and Asylum Act 1999. Those functions relate to the making of rules regulating the bringing of appeals to the ASA and the practice and procedure of the adjudicators, and the appointment of adjudicators and staff.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 This Order is made in pursuance of sections 1 of the Ministers of the Crown Act 1975. It provides for the transfer of statutory functions that are currently vested in the Secretary of State.
  - 4.2 The statutory functions to which this Order relates are those under the Immigration and Asylum Act 1999 (section 104, and Schedule 10) relating to the ASA.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
  - 6.1 The Minister of State for Immigration, Citizenship and Nationality, Liam Byrne, has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Asylum Support Adjudicators) Order 2007 are compatible with the Convention rights”.

## **7. Policy background**

- 7.1 The transfer of the ASA is part of the Government's ongoing programme for the reform of the system of tribunals in the UK. The White Paper "Transforming Public Services: Complaints, Redress and Tribunals" published in 2004 explained the Government's proposals. The recommendations were the Government's response to the review by Sir Andrew Leggatt published in 2001.
- 7.2 Sir Andrew Leggatt's review found that the present disparate administration of tribunals across a wide range of government departments and other public bodies did not provide the best or most efficient service to citizen or tax payer. One key recommendation in the White Paper was the creation of a new agency in the Department for Constitutional Affairs to be known as the Tribunals Service. The Tribunals Service would be responsible, over time, for the administration of most central government tribunals. The responsibility for administering these tribunals would therefore transfer to the Lord Chancellor.
- 7.3 The Tribunals Service was launched in April 2006 and the first phase of tribunals transferred on that date. The programme of transfers in ongoing and the transfer of the ASA in April 2007 is part of the next phase of activity.
- 7.4 The ASA is currently a Home Office Tribunal and is responsible for hearing appeals against Home Office decisions regarding the provision of support to people seeking asylum, failed asylum seekers, and failed asylum seeking families. It was created in 2000. The ASA has been fully consulted regarding the transfer and is happy for the transfer to take place.
- 7.5 Given the nature of the functions transferring (which are set out below) it is not possible to make the transfer without a Transfer of Functions Order.
- 7.6 The Transfer of Functions Order provides that powers currently exercised by the Secretary of State for the Home Department under section 104 and Schedule 10 of the Immigration and Asylum Act 1999 will transfer to the Lord Chancellor. Those functions relate to the rules regulating the bringing of appeals to the ASA, the practice and procedure of the adjudicators, and the ASA's staff. It will also enable the Lord Chancellor to appoint adjudicators.
- 7.7 The functions in Schedule 10 (the appointment of adjudicators and ASA staff) will become Protected Functions of the Lord Chancellor and may not be transferred to another Minister in the future. Protected Functions were provided for by the Constitutional Reform Act 2005 in order that functions relating to the judiciary or the organisation of the courts sit with the office of the Lord Chancellor to guarantee judicial independence.
- 7.8 Section 104 provides that the Secretary of State may make rules regulating the procedure for bringing and hearing appeals. They may cover such matters as periods of notice for bringing appeals, the burden of proof in the appeals, the admissibility of various matters as evidence, the summoning of witnesses, how adjudicators are to proceed in the absence of the appellant, how they may

determine cases without a hearing, and the publication of their decisions. These regulations are the Asylum Support Appeals (Procedure) Rules 2000.

- 7.9 Schedule 10 contains further provisions concerning the Secretary of State's powers in relation to appointment of adjudicators, terms and conditions of appointment, remuneration, expenses and pensions, compensation, ASA staff, expenditure, and proceedings
- 7.10 Legislative provisions and policy responsibility concerning the provision of any right of appeal to the ASA will be retained by the Secretary of State for the Home Department. This includes creation of new rights of appeal, and the amendment or curtailment of existing rights of appeal.
- 7.11 Article 4 of the Order provides for the smooth transfer of matters relating to the ASA and ensures that its proceedings remain valid during the transfer period.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies
- 8.2 The impact on the public sector is neutral, as resources are being transferred from the Home Department to the Department for Constitutional Affairs.

## **9. Contact**

Claire Downie at the Home Office, Tel: 020 8760 8673 or email: [claire.downie@homeoffice.gsi.gov.uk](mailto:claire.downie@homeoffice.gsi.gov.uk) can answer questions regarding the instrument.

Mike Watson at the Department for Constitutional Affairs, Tel: 020 7029 9772 or email: [mike.watson@tribunals.gsi.gov.uk](mailto:mike.watson@tribunals.gsi.gov.uk) can answer questions regarding the instrument.