

**EXPLANATORY MEMORANDUM TO  
THE FIRST-TIER AND UPPER TRIBUNAL (CHAMBERS) (AMENDMENT NO 2)  
ORDER 2009**

**2009 No. 1021**

**THE UPPER TRIBUNAL (LANDS CHAMBER) FEES ORDER 2009**

**2009 No. 1114**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instruments**

2.1 The First-tier and Upper Tribunal (Chambers) (Amendment No.2) Order (“the Chambers Order”) creates the Lands Chamber in the Upper Tribunal and allocates functions to this new chamber. The Upper Tribunal (Lands Chamber) Fees Order 2009 (“the Fees Order”) provides for the fees payable in respect of proceedings before the Lands Chamber of the Upper Tribunal.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The jurisdiction of the Lands Tribunal is being transferred into the Lands Chamber of the Upper Tribunal as part of an ongoing series of transfers of tribunals into the new tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”). These Orders, together with the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (“the Transfer Order”), put in place the legislation necessary to give effect to this transfer.

4.2 Part 1 of the 2007 Act creates a new two tier tribunal system into which existing tribunals can be transferred or new appeal rights directed. Chapter 3 of Part 1 provides a number of order making powers to effect the transfer of existing tribunals into this system. Section 3 establishes the First-tier Tribunal and the Upper Tribunal. Section 30 allows for the Lord Chancellor to transfer functions of tribunals listed in Schedule 6 of the 2007 Act to either or both of these two Tribunals.

4.3 The first jurisdictions transferred into the new structure on 3 November 2008. The orders that came into force to implement this change can be found at <http://www.tribunals.gov.uk/Tribunals/Rules/rules.htm>. Further transfer orders are planned before the end of 2009.

## 5. Territorial Extent and Application

5.1 The Chambers Order extends to the UK.

5.2 The Fees Order extends to England and Wales.

## 6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## 7. Policy background

- *What is being done and why*

7.1 The need for reform of the tribunals system was set out in Sir Andrew Leggatt's Review 'Tribunals for Users – One System One Service' <http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm> which found that tribunals had grown in an almost entirely haphazard way and were not organised for the benefit of users.

7.2 The 2007 Act was enacted to implement Sir Andrew Leggatt's recommendation of a single tribunals system. It created two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The Upper Tribunal is primarily, but not exclusively, a tribunal for hearing appeals from the First-tier Tribunal. The Transfer Order transfers the jurisdiction of the Lands Tribunal into the Upper Tribunal as part of the Government's ongoing commitment to implement the provisions of the 2007 Act and provide a new tribunals structure designed to meet the needs of users.

7.3 The Chambers Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 ("the 2008 Order"). The 2008 Order organised the First-tier Tribunal and Upper Tribunal into chambers and made provision for the allocation of those tribunals' functions between the chambers. This Order creates a new Lands Chamber in the Upper Tribunal, and allocates functions to this new chamber. It also adds one category (cases related to the Health in Pregnancy Grant, provided for by the Health and Social Care Act 2008 (c.14)) to the functions allocated to the Social Entitlement Chamber of the First-tier Tribunal. Finally, it provides that where there is doubt or dispute as to the chamber in which a case should be heard, the Senior President of Tribunals may allocate the case to the most appropriate chamber.

7.4 The Fees Order provides for the fees payable in respect of proceedings before the Lands Chamber of the Upper Tribunal. It provides for the same categories and level of fees as those that currently apply to the Lands Tribunal.

- *Consolidation*

7.5 The Chambers Order is a further amendment to the 2008 Order. Further rounds of amendments are expected as further jurisdictions are transferred into the new tribunals structure. Consolidation is planned for the 2008 Order in due course, once the content is more settled.

## **8. Consultation outcome**

8.1 The Consultation Paper Transforming Tribunals – Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007 (CP30/07) was published on 28 November 2007 with the response published on 19 May 2008. The consultation ended on 22 February 2008 with 140 responses received. The consultation and response are available at <http://www.justice.gov.uk/publications/cp3007.htm>

8.2 The Government set out in the consultation its intention to preserve and enhance the special qualities of the Lands Tribunal within the new structure with priority given to continuity (see paragraphs 184-185 on page 38 of the consultation). It proposed a three chamber structure for the Upper Tribunal, recreating the Lands Tribunal substantially unchanged as the Lands Chamber of the Upper Tribunal. The consultation did not ask a specific question on the transfer of the Lands Tribunal. However, 61 respondents provided a response on the proposals for the three-chamber structure for the Upper Tribunal and 52 were in support.

8.3 The Senior President of Tribunals and the President of the Lands Tribunal have been consulted during the development of both Orders and on their final version. The Senior President of Tribunals has concurred with the making of the Chambers Order. The Administrative Justice and Tribunals Council have been consulted on the fees order and considered the Chambers Order.

8.4 Other Government Departments have been consulted on the functions allocated by the Chamber Order. Two of the Lords Commissioners of Her Majesty's Treasury have consented to the fees order.

## **9. Guidance**

9.1 No new guidance has been provided as users should see little change in procedure at the point of transfer. Lands Tribunal stakeholders have received correspondence outlining the background to the change and explaining the implications.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. A Regulatory Impact Assessment (RIA) was prepared for the Tribunals, Courts and Enforcement Act. This can be found at: <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm> (see pages 2 -14 for the tribunals element of the RIA)

In terms of this order, the RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals bringing tribunals together in one organisation. No additional costs have been identified from the setting up of the Upper Tribunal in the first 3 years (see paragraph 1.63 of the RIA), and no further costs have been identified to change this assumption.

## **11. Regulating small business**

11.1 The legislation does not impact upon small businesses.

## **12. Monitoring & review**

12.1 The impact of this SI and the Transfer Order will be monitored and reviewed as part of the annual report of the Tribunals Service, which measures performance against key indicators. In addition an annual report by the Senior President of Tribunals is published. This will include matters relating to the Lands Chamber of the Upper Tribunal where the Senior President considers this appropriate.

## **13. Contact**

Gillian Brooks at the Ministry of Justice Tel: 020 3334 3104 or email: [Gillian.brooks@justice.gsi.gov.uk](mailto:Gillian.brooks@justice.gsi.gov.uk) can answer any queries regarding the instrument.