

**EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS)
(AMENDMENT NO 3) ORDER 2009**

2009 No. 1590

&

THE QUALIFICATIONS FOR APPOINTMENT OF MEMBERS TO THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (AMENDMENT) ORDER 2009

2009 No. 1592

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 Tribunal and Upper Tribunal (Chambers) (Amendment No.3) Order (“the Chambers Order”) creates the General Regulatory Chamber of the First-tier Tribunal, allocates functions to this new chamber, and provides for other amendments to the existing Chamber allocation. The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal (Amendment) Order 2009 (“the Qualifications Order”) provides for further qualifications and experience that a person may have in order to be eligible for appointment as a member of the First-tier Tribunal or Upper Tribunal who is not a judge of the tribunal and provides for other amendments to the existing order.

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

3.1 None

4. Legislative Context

4.1 The jurisdictions of a range of tribunals are being transferred into the unified tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), as part of an ongoing programme. These Orders put in place the legislation necessary to support the transfers by providing for the allocation of work into Chambers within the First-tier Tribunal and Upper Tribunal as well as the qualifications and experience required for the appointment of members who are not judges.

4.2 Part 1 of the 2007 Act creates a two tier tribunal system into which existing tribunals can be transferred or new appeal rights directed. Section 3 establishes the First-tier Tribunal and the Upper Tribunal. Section 7 provides for the Lord Chancellor with the concurrence of the Senior President of Tribunals, to make provision by order

for the organisation of each tribunal into a number of Chambers. Paragraph 2(2) of Schedule 2 and paragraph 2(2) of Schedule 3 provide for the Lord Chancellor, with the concurrence of the Senior President of Tribunals, to prescribe by order the qualifications required in order to be eligible for appointment to the First-tier Tribunal and Upper Tribunal for persons who are not judges.

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 These Orders extend to the UK.

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. These Orders support the programme of transfers of tribunals, and are made as part of the Government's ongoing commitment to implement the provisions of the 2007 Act and provide a unified tribunal's 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 General Regulatory Chamber in the First-tier Tribunal, and allocates functions to this new chamber. It clarifies the division of functions between the Social Entitlement Chamber and the Tax Chamber of the First-tier Tribunal. It renames the Finance and Tax Chamber of the Upper Tribunal as the Tax and Chancery Chamber, and adds to the functions allocated to that Chamber and to the Administrative Appeals Chamber of the Upper Tribunal. Finally, the Order amends the allocation of functions in relation to the Upper Tribunal's "judicial review" jurisdiction so that some of those functions are allocated to the Chancery Chamber and the remainder to the Administrative Appeals Chamber.

7.4 The Qualifications Order amends the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 to include further qualifications and experience that a person may have in order to be eligible for appointment as a member of the First-tier Tribunal or Upper Tribunal who is not a judge of the tribunal. In addition to making an amendment to clarify eligibility under Article 2(3) of the 2008 Order, the Order inserts a definition of “registered medical practitioner”, the effect of which is that a person who is a registered medical practitioner need not hold a licence to practise in order to be eligible for appointment as a member of either Tribunal.

- ***Consolidation***

7.6 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. No consolidation is necessary for the Qualification Order as no further amendments are planned but this will be kept under review.

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 paper and response are available at <http://www.justice.gov.uk/publications/cp3007.htm>

8.2 The Government set out in the consultation paper its intention to establish a General Regulatory Chamber in the First-Tier Tribunal and proposed to transfer the Charity Tribunal, Consumer Credit Appeals Tribunal, Estate Agents Appeal Panel and part of the jurisdiction of the Transport Tribunal to that Chamber (see paragraphs 166-176, 200 & 208 of the consultation paper). In response to the question of whether the general allocation of jurisdictions to Chambers was the right one, 67 respondents provided a response to the question and 48 thought the approach was correct (see page 11 of the response).

8.3 The Senior President of Tribunals has been consulted during the development of both Orders and concurred with the making of them. The Administrative Justice and Tribunals Council have considered the orders and other Government Departments have been consulted on the functions allocated by the Chambers Order.

9. Guidance

9.1 These orders do not stand alone but support the programme of transfers of tribunals into the unified tribunal’s structure. Therefore, whilst separate guidance on these orders is not planned, the orders will be made available on the Tribunals Service website which can be found at <http://www.tribunals.gov.uk/>.

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 these orders, 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 First-tier Tribunal and 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 these orders will be monitored and reviewed as part of the annual report of the Tribunals Service, which measures performance against key indicators.

13. Contact

Andy Moseley at the Ministry of Justice Tel: 020 3334 6553 or email: andy.moseley@justice.gsi.gov.uk can answer any queries regarding the instrument.
