

**EXPLANATORY MEMORANDUM TO
THE DISCIPLINE OF JUDGES (DESIGNATION) ORDER 2009**

2009 No. 590

1. This explanatory memorandum has been prepared by the Office for Judicial Complaints and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order extends the disciplinary framework set out in the Constitutional Reform Act 2005 to a number of offices which have been created following the restructuring of Tribunals.

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

- 3.1 This order replaces the Discipline of Judges (Designation) Order 2008 (SI 2008/2700). It would have been possible to simply add Lay Employment Tribunal members without replacing that Order. While it did not in our view affect the validity of that Order the manner in which the signatures were laid out was incorrect in that the maker of the Order, the Lord Chancellor signed next to the words 'I agree'. We have therefore taken the opportunity to replace that Order.

4. **Legislative Context**

- 4.1 Part 4 of the Constitutional Reform Act 2005 (CRA) establishes a framework for judicial discipline. Judges are covered by that disciplinary framework if, among other things, they hold an office listed in Schedule 14 of the CRA: see s. 109(4) CRA. A judge holding an office that is not listed in Schedule 14 may be brought within that disciplinary framework by an order made under section 118 CRA. The Lord Chancellor may designate an office under section 118 CRA where he has powers to remove the holder of that office.
- 4.2 The purpose of this Order is to bring certain judges, who would not otherwise be covered by the CRA disciplinary framework, within that framework.
- 4.3 The Tribunals, Courts and Enforcement Act 2007 (TCE Act) established a new, unified tribunals structure with effect from 3 November 2008. Many judges in that new tribunals structure hold offices that are not listed in Schedule 14 CRA. The Discipline of Judges (Designation) Order 2008 designated certain offices in the new tribunals structure, so that they would be covered by the CRA disciplinary framework. These were the offices of transferred-in judge, and transferred-in other member, of the First-tier Tribunal, and of the Upper Tribunal, Chambers Presidents, and Deputy Chambers Presidents, where the persons appointed to those offices already hold high judicial office. This simply replicates the provision in relation to those offices and in addition adds lay members of Employment Tribunals to those offices thereby designating them as

office holders who are subject to the discipline regime set out in the Constitutional Reform Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The purpose of this Order is to bring lay members of Employment Tribunals into the discipline regime set out by the Constitutional Reform Act 2005 and the regulations made under it. This means that they are subject to the same disciplinary procedures as other office holders listed in Schedule 14 of the Constitutional Reform Act or designated under section 118 of that Act.

8. Consultation outcome

8.1 Non-statutory consultation has taken place. Drafts of the Order were sent to the President of the Employment Tribunals of England and Wales and the President of the Employment Tribunals of Scotland, who were content with the Order. Drafts were also sent to the Lord Chief Justice of England and Wales, the Lord Chief Justice of Northern Ireland and the Lord President of the Court of Session.

9. Guidance

9.1 No guidance will be issued. However, judicial office holders are issued with terms and conditions, which set out how disciplinary matters are dealt with.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will not be undertaking monitoring and review. This is because the purpose of the instrument is to adopt the same disciplinary procedures for lay members of the Employment Tribunals as for other office holders whose offices are listed

in Schedule 14 of the Constitutional Reform Act 2005, or designated under section 118 of that Act. The instrument is therefore not seeking to achieve an outcome which is measurable, but to ensure consistency of approach in relation to the discipline of judicial office holders.

13. Contact

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