

# **TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

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## **EXPLANATORY NOTES**

### **PART 7: MISCELLANEOUS**

#### ***Summary***

637. **Part 7** enables High Court enforcement officers to execute writs of possession issued to enforce compulsory purchase orders, and removes the obligation for enforcement of such writs from High Sheriffs. This Part also amends subsection 31(5) of the SCA 1981, reproducing and extending the effect of the existing judicial review provision. In particular, it provides that where the decision maker in question is a court or tribunal and the decision is quashed on the ground that there has been an error in law, the High Court will be able to substitute its own decision where, without that error, it is satisfied that there would have been only one decision which the court or tribunal could have reached. Part 7 also changes the way in which ACAS negotiated settlements are enforced and reforms the process for hearing design right appeals.

#### ***Background***

##### ***Compulsory purchase***

638. Currently, there is an anomaly as regards the execution of High Court writs in that High Court enforcement officers and High Sheriffs are able to execute High Court writs of execution, but only High Sheriffs are able to enforce writs of possession issued to enforce compulsory purchase orders. The proposed changes will align the enforcement of compulsory purchase orders with the regime for enforcing High Court writs of execution contained in section 99 of and Schedule 7 to the Courts Act 2003.

##### ***Enforcement of ACAS brokered agreements***

639. The Advisory, Conciliation and Arbitration Service (ACAS) has no enforcement powers of its own. *Transforming Public Services* undertook to simplify the system so that an award of compensation, whether ordered by an employment tribunal or agreed between the parties (under compromises involving ACAS), can be enforced with the minimum of bureaucracy as if it were an order of the civil courts. The Act makes such agreements enforceable in England and Wales as if they were sums payable under a county court order, and in Scotland by diligence as if the certificate were an extract registered decree arbitral bearing a warrant of execution issued by the sheriff court.

##### ***Appeal in relation to design rights***

640. The Registered Designs Appeal Tribunal (RDAT) was created by section 28 of the Registered Designs Act 1949. Any appeal from the registrar (the Comptroller-General of Patents, Designs and Trade Marks) under that Act lies to the RDAT. The Act transfers the jurisdiction of the RDAT to the Patents County Court and the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.

***Commentary on Sections: Part 7***

***Section 139: Enforcement by enforcement officers***

641. This section amends the Lands Clauses Consolidation Act 1845 and the Compulsory Purchase Act 1965 to enable writs of possession issued to enforce compulsory purchase orders to be executed by High Court enforcement officers.
642. This change aligns the enforcement of compulsory purchase orders with the regime for enforcing High Court writs of execution contained in section 99 of and Schedule 7 to the Courts Act 2003. It does not remove the right of a sheriff to enforce a writ of possession issued to enforce a compulsory purchase order, should one be directed to him and should he wish to enforce it. The section removes the obligation, with the attendant legal responsibilities and liabilities, to enforce such writs of possession (High Sheriffs being unpaid volunteers who are appointed annually).

***Section 140: Supplementary and Schedule 22: Compulsory purchase: consequential amendments***

643. **Section 140** amends Schedule 7 to the Courts Act 2003 to enable the arrangements that are currently in place for enforcement officers executing High Court writs of execution, (identifying enforcement districts, providing for administrative arrangements for enforcement of such writs and extending to enforcement officers powers and obligations that sheriffs have under common law), to be extended to High Court enforcement officers executing writs of possession issued to enforce compulsory purchase orders.
644. **Schedule 22** makes consequential amendments in connection with the above.

***Section 141: Judicial review: power to substitute decisions***

645. This section replaces the existing section 31(5) of the SCA 1981 and extends the power of the High Court in respect of quashing orders. The High Court will still have the power to return a matter to a decision maker with a direction that it reach a decision in accordance with its findings. However, where the decision maker is a court or tribunal and the decision is quashed on the ground that there has been an error of law, the court will, alternatively, be able to substitute its own decision for that decision if it is satisfied that without the error there would have been only one decision that the court or tribunal could have reached.
646. Unless the High Court directs otherwise, a substitute decision will have effect as if it were a decision of the relevant court or tribunal.

***Section 142: Recovery of sums payable under compromises involving ACAS***

647. **Section 142** amends the Employment Tribunals Act 1996 to provide that sums payable under ACAS negotiated settlements are enforceable in England and Wales as if they were sums payable under a county court order, and in Scotland by diligence as if the certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court. In each case, the sum is not recoverable if the person by whom it is payable obtains a declaration in the relevant jurisdiction that the sum would not be recoverable from him under the general law of contract.
648. Rules of court may make provision as to time limits within which an application to a county court (or, in Scotland, a sheriff) for a declaration that a compromise sum is not recoverable is to be made; and when an application (whether made to a county court, the sheriff or an employment tribunal) for a declaration that a sum is not recoverable is pending.

***Section 143: Appeals in relation to design rights***

649. **Section 143** abolishes the Registered Designs Appeals Tribunal and diverts its jurisdiction in England and Wales to the Patents County Court and the High Court concurrently. The Patents County Court is one with which users are familiar, is experienced in design matters, and its rules allow for affordable representation by patent agents and efficient procedures. While the Patents County Court and the High Court have concurrent jurisdiction, it is intended that appeals must first come to the Patents County Court which can then decide whether the appeal should be transferred to the High Court. The RDAT's Scottish jurisdiction is transferred to the Court of Session and its jurisdiction in relation to Northern Ireland to the High Court in Northern Ireland. The courts to which cases from the Isle of Man are to be diverted can be prescribed by an Order in Council under section 47 of the Registered Designs Act 1949.
650. The RDAT also has the power to deal with some appeals on (unregistered) design rights pursuant to section 249 of the Copyright, Designs and Patents Act 1988. Design rights are rather different in nature to registered designs and are more complex, as they raise issues that are much more akin to copyright than registered designs. Section 143(3) therefore provides that in England and Wales and Northern Ireland, appeals relating to design rights are to be heard by the High Court and that, in Scotland, appeals will lie to the Court of Session.