

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

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## **EXPLANATORY NOTES**

### **PART 1: TRIBUNALS AND INQUIRIES**

#### ***Background***

9. Tribunals constitute a substantial part of the justice system. They deal with a wide range of disputes including those between the individual and the state (such as benefits, tax and immigration) and between private individuals (such as employment disputes).
10. Until now, most tribunals have been created by individual pieces of primary legislation, without any overarching framework. Many have been administered by the government departments responsible for the policy area in which that tribunal has jurisdiction. Those departments are sometimes responsible for the decisions which are appealable to the tribunal.
11. In the report of his Review of Tribunals, *Tribunals for Users – One System, One Service*, published in August 2001, Sir Andrew Leggatt recommended extensive reform to the tribunals system. He recommended that tribunals should be brought together in a single system and that they should become separate from their current sponsoring departments. He recommended that such a system be administered instead by a single Tribunals Service, in what was then the Lord Chancellor's Department.
12. The Government agreed and published its response to the report in the White Paper *Transforming Public Services: Complaints, Redress and Tribunals* in July 2004.

#### ***The new tribunals***

13. The Government's response to Sir Andrew Leggatt's recommended single tribunal system is to create 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, an appellate tribunal from the First-tier Tribunal.
14. The Act also provides for the establishment of "chambers" within the two tribunals so that the many jurisdictions that will be transferred into the tribunals can be grouped together appropriately. Each chamber will be headed by a Chamber President and the tribunals' judiciary will be headed by a Senior President of Tribunals.

#### ***Membership, deployment and composition***

15. A distinctive feature of tribunals in their current form is their membership. Some tribunals consist of a lawyer sitting alone. Others comprise a lawyer sitting with one or more members who may be experts in their field (such as doctors or accountants) who have experience relevant to the work of the tribunal, or have no relevant experience but have generic skills. A few tribunals have no legal members at all.

16. At present, there is no coherent system in place for deploying tribunal members. While some sit in more than one jurisdiction, this will be as a result of the member having gone through the whole appointments process for each additional jurisdiction.
17. The Act creates new offices for the First-tier and Upper Tribunal. It creates new titles (giving the legal members the title of judges) and a new system of deployment. Judges of the First-tier Tribunal or Upper Tribunal will be assigned to one or more of the chambers of that tribunal, having regard to their knowledge and experience. The fact that a member may be allocated to more than one chamber allows members to be deployed across the jurisdictions within the tribunal. It is expected that the current members of transferred tribunals, apart from the General Commissioners, will become members of the new tribunals.

### ***Reviews and appeals and the judicial review jurisdiction of the tribunals***

18. Currently there is no single mechanism for appealing against a tribunal decision. Appeal rights differ from tribunal to tribunal. In some cases there is a right of appeal to another tribunal. In other cases there is a right of appeal to the High Court. In some cases there is no right of appeal at all. The Act provides a unified appeal structure. Under the Act, in most cases, a decision of the First-tier Tribunal may be appealed to the Upper Tribunal and a decision of the Upper Tribunal may be appealed to a court. The grounds of appeal must relate to a point of law. The rights to appeal may only be exercised with permission from the tribunal being appealed from or the tribunal or court, as the case may be, being appealed to.
19. It will also be possible for the Upper Tribunal to deal with some judicial review cases which would otherwise have to be dealt with by the High Court or Court of Session. The Upper Tribunal has this jurisdiction only where a case falls within a class specified in a direction given by the Lord Chief Justice or in certain other cases transferred by the High Court or Court of Session, but it will not be possible for cases to be transferred to the Upper Tribunal if they involve immigration or nationality matters.
20. Instead of tribunal rules being made by the Lord Chancellor and other government Ministers under a multiplicity of different rule-making powers, a new Tribunal Procedure Committee will be responsible for tribunal rules. This committee has been modelled on existing rule committees which make rules of court.

### ***Transfer of tribunal functions***

21. It is intended that the new tribunals will exercise the jurisdictions currently exercised by the tribunals listed in Parts 1 to 4 of Schedule 6, which constitute most of the tribunal jurisdictions administered by central government. The Government's policy is that in the future, when a new tribunal jurisdiction is required to deal with a right of review or appeal, that right of appeal or review will be to these new tribunals.
22. Some tribunals have been excluded from the new structures because of their specialist nature. Tribunals run by local government have for now been excluded, as their funding and sponsorship arrangements are sufficiently different to merit a separate review.
23. There are also tribunals that will share a common administration, and the leadership of the Senior President of Tribunals, but whose jurisdictions will not be transferred to the new tribunals. They are the AIT, the employment tribunals and the Employment Appeal Tribunal. The AIT has a unique single-tier structure (as prescribed by the Nationality, Immigration and Asylum Act 2002, as amended by the Asylum and Immigration (Treatment of Claimants etc) Act 2004) which would not fit into the new structure established by the Act. The employment tribunals and the Employment Appeal Tribunal are excluded because of the nature of the cases that come before them, which involve one party against another, unlike most other tribunals which hear appeals from citizens against decisions of the State.

### ***Administrative Support***

24. In *Transforming Public Services*, the Government set out its plans to create a single Tribunals Service to provide common administrative support to the main central government tribunals. The new Service, an executive agency of what was the Department for Constitutional Affairs (DCA) and is now the Ministry of Justice (MoJ), was launched in April 2006. It provides support to a range of tribunals, including the Asylum and Immigration Tribunal, the Social Security and Child Support Tribunals, the employment tribunals and the Employment Appeal Tribunal, and the Mental Health Review Tribunals in England. Most tribunals which are the responsibility of central government are now administered by the Tribunals Service, or will join the Service over the next few years.
25. The Tribunals Service was created by machinery of government changes. Legislation was not required. The Act does not, therefore, set out a blueprint for the new agency. The Act does, however, give the Lord Chancellor the power to transfer to himself certain statutory powers and duties that primarily relate to the provision of administrative support for tribunals. It entrenches these powers and duties with the office of the Lord Chancellor so that they can be transferred to another minister only by primary legislation.
26. In developing these proposals, the intention has been to follow the principles underlying the evolving constitutional settlement between the executive and the judiciary set out in the concordat agreed between the Lord Chancellor and the Lord Chief Justice for England and Wales in January 2004, and the Constitutional Reform Act 2005 (“CRA 2005”).

### ***Oversight of Tribunals and Inquiries***

27. The Council on Tribunals (“the Council”) operates under the Tribunals and Inquiries Act 1992 (“the 1992 Act”). Its statutory purpose is to keep under review and report on the constitution and working of tribunals under its supervision. The Council has to consider and report on particular matters that may be referred to it under the 1992 Act with respect to tribunals and, where necessary, to consider and report on the administrative procedures of statutory inquiries. The Council is also under a statutory duty to make an annual report about its work, which is to be laid before Parliament. The Council seeks to ensure that tribunals and inquiries meet the needs of users through the provision of an open, fair, impartial, efficient, timely and accessible service.
28. Sir Andrew Leggatt recommended that the Council on Tribunals should play a central role in the new tribunals system (recommendations 168-182). *Transforming Public Services* built on these recommendations in the wider context of the Government’s proposals for reforming the Administrative Justice System. Chapter 11 of the White Paper proposed that with the creation of the Tribunals Service in April 2006 it was also necessary for the Council to change. It proposed that the Council should take on a wider remit to become an Administrative Justice and Tribunals Council and in particular to focus on the needs of the public and users.

### ***Administrative Justice and Tribunals Council***

29. Under this Act, the Administrative Justice and Tribunals Council (“the AJTC”) will adopt a role in relation to the supervision of tribunals similar to that currently exercised by the Council on Tribunals. But in addition to taking on the Council on Tribunals’ current remit, the AJTC will be charged with keeping the administrative justice system as a whole under review. It is tasked with considering how to make the system more accessible, fair and efficient, and advising the Lord Chancellor, the Scottish Ministers, Welsh Ministers and the Senior President accordingly.

30. The AJTC's wider administrative justice role will be concerned with ensuring that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution routes satisfactorily reflect the needs of users.
31. The AJTC will be of a comparable size to the present Council on Tribunals, with between 10 and 15 members appointed by the Lord Chancellor, and by Ministers from the devolved administrations. One of those appointed members will be nominated by the Lord Chancellor, after consultation with the Scottish and Welsh Ministers, to chair the AJTC. Whereas the Council has just a Scottish Committee, the AJTC will have Scottish and Welsh Committees.

### ***Enforcement***

32. Tribunals have no enforcement powers of their own. If a monetary award is not paid then, in England and Wales, the claimant must register it in the county court and use the enforcement methods available there (for example see section 15 of the Employment Tribunals Act 1996). *Transforming Public Services* undertook to simplify the system so that an award of compensation, whether ordered by the tribunal or agreed between the parties (under compromises involving the Advisory, Conciliation and Arbitration Service (ACAS)), can be enforced with the minimum of bureaucracy as if it were an order of the civil courts.
33. The Act will remove the need for registration of unpaid awards in the county court or the High Court and provide that they can be enforced as if they bear the right to a warrant of execution. Claimants will be able to go directly to the county court or High Court for enforcement.
34. Essentially, the legislative changes will (a) allow claimants to proceed immediately to enforcement (levelling the playing field between tribunal users and other civil claimants), and (b) ensure that those owed money as a result of a tribunal hearing can benefit from improvements to the wider civil enforcement system.
35. The procedure for enforcing tribunal awards in England and Wales (and Northern Ireland), and ACAS brokered agreements (see section 142), will become similar to the Scottish process, in that the award will be treated as enforceable without any intermediate steps being necessary. Part 1 of the Act does not alter the methods of enforcement either in Scotland or in England and Wales (or Northern Ireland), but allows tribunals to benefit from them.
36. In addition, the Act provides for unpaid awards to be entered on the Register of Judgments, Orders and Fines, see paragraph 55 of Schedule 8, (which may be searched by banks, building societies, and credit companies when considering applications for credit). The Act also makes it easier for the courts to obtain information about the debtor, as claimants will be able to make information requests under the provisions contained in Part 4 of the Act, which will help them to identify what kind of court action it would be appropriate to take to recover the debt.