

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

EXPLANATORY NOTES

PART 1: TRIBUNALS AND INQUIRIES

Commentary on Sections: Part 1

Section 14: Proceedings on appeal to Court of Appeal etc

121. Where the appellate court determines that the Upper Tribunal has made an error of law, it has power to set aside the decision and either send the case back to the Upper Tribunal to be redecided (or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to that other tribunal or person, with direction for its reconsideration), or to make the decision which it considers the Upper Tribunal (or the other tribunal or person) should have made. Under subsection (3), the appellate court may direct that the persons chosen to reconsider the case are not those who made the decision which gave rise to the appeal. It may also give procedural directions in connection with the reconsideration of the case.

“Judicial Review” Sections 15 to 21

122. Tribunals currently have no powers of judicial review. Sections 15 to 21 create a statutory regime which enables the Upper Tribunal to exercise judicial review powers in appropriate cases. This will allow the parties to have the benefit of the specialist expertise of the Upper Tribunal in cases similar to those with which the Upper Tribunal routinely deals in the exercise of its statutory appellate jurisdiction. These provisions do not alter the inherent or statutory jurisdiction of the High Court (as amended by section 141), except as a result of the amendments made by section 19.
123. There will be two situations in which the Upper Tribunal will be able to use these powers in cases arising under the law of England and Wales or of Northern Ireland. The first is where a direction has been made by the Lord Chief Justice or his delegate with the agreement of the Lord Chancellor, specifying a class of case to be dealt with by the Upper Tribunal rather than the High Court. The second is where the High Court orders the transfer of an individual case because it considers it just and convenient to do so in cases arising under the law of England and Wales or of Northern Ireland (but it will not be possible for cases to be transferred to the Upper Tribunal if they involve immigration or nationality matters).