

EXPLANATORY MEMORANDUM TO
THE MEMBERSHIP OF THE TRIBUNAL PROCEDURE COMMITTEE
TRANSITIONAL ORDER 2008

2008 No. 1149

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty

2. Description

- 2.1. The Order allows for persons who are or are members of a tribunal listed in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 ('TCE') to be treated as if they were a judge or a member of the First-tier or Upper Tribunals. This then allows the Lord Chief Justice of England and Wales to make appointments to the Tribunal Procedure Committee prior to the establishment of the First-tier and Upper Tribunals.

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

- 3.1 None

4. Legislative Background

- 4.1 Paragraph 22(1) of Schedule 5 to the TCE provides for the Lord Chief Justice of England and Wales to make the following 3 appointments to the Tribunal Procedure Committee:

- (a) one of the judges of the First-tier Tribunal,
- (b) one of the judges of the Upper Tribunal, and
- (c) one person who is a member of the First-tier Tribunal, or is a member of the Upper Tribunal, but is not a judge of the First-tier Tribunal and is not a judge of the Upper Tribunal.

- 4.2 Paragraph 2 of Schedule 9 of the TCE Act 2007 allows the Lord Chief Justice of England and Wales to make appointments to the Tribunal Procedure Committee prior to the establishment of the First-tier and the Upper Tribunals. That provision states that the Lord Chancellor can make an Order, which allows a member of a tribunal listed in any of Parts 1 to 4 of Schedule 6 to the Act to be treated as a person whom the Lord Chief Justice can appoint to the Tribunal Procedure Committee.

5. Extent

- 5.1. The Order extends to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

Powers to make tribunal procedural rules usually rest with the Lord Chancellor or a Secretary of State from the relevant Department. They are usually subject to parliamentary procedure and the Administrative Justice and Tribunals Council are consulted, but there is no standard form of approach, and no statutory requirements to consult stakeholders. In contrast, in the courts, Rules are made by rule committees with judicial and practitioner membership, allowing for consistency in the development of procedure. It is the intention of the establishment of the Tribunal Procedure Committee to replicate this arrangement for tribunals.

A Tribunals Procedure Committee is to be established prior to commencement of the Tribunals Courts and Enforcement Act 2007 and new tribunals. By doing this, the committee will be able to consider the first sets of draft rules in preparation for the new Chamber structure.

The Tribunal Procedure Committee's role will be to make procedural rules. It will be concerned with the practice and procedure of tribunals and not the substantive law. The rules will set out the methods and machinery to be followed in judicial proceedings in the First-tier and Upper Tribunal. The Committee can also be required to make rules to meet a defined objective.

The Committee should provide for a more co-ordinated approach to Rule making across jurisdictions

This Order makes transitional provision to allow certain persons who have been appointed to, or appointed as, a tribunal listed in Parts 1 to 4 of Schedule 6 to the TCE to be considered a judge or a member of the First-tier Tribunal or the Upper Tribunal, as the case may be, for the purposes of paragraph 22(1) of Schedule 5 to the Act. That paragraph provides that the Lord Chief Justice of England and Wales must appoint judges and members of the First-tier Tribunal and the Upper Tribunal to the Tribunal Procedure Committee. The people listed in the Table in this Order will become eligible to be appointed to the Tribunal Procedure Committee despite the fact that their offices have not yet transferred into the First-tier or Upper Tribunals. This will allow the Tribunal Procedure Committee to be up and running prior the First-tier and Upper Tribunals being functional so that procedural rules can be made for the benefit of those tribunals.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) was prepared for the Tribunals, Courts and Enforcement Act. This Act provides for the Tribunal Procedure Committee. The Concordat agreed between the Lord Chancellor and the Lord Chief Justice set out the respective roles of the judiciary and the executive in making rules for judicial forums. The creation of a Tribunal Procedure Committee will bring rule making for tribunals into line with the principles set out in the Concordat and the Constitutional Reform Act. The Act states the statutory composition of the Committee, which will be drawn from judicial and non-judicial members. There will be no recruitment costs for judicial members, as they will be appointed from existing office-holders. The full RIA document can be found at: <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm>

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to: Vicky Liddemore, Ministry of Justice, 1st Floor, 4 Abbey Orchard Street, SW1P 2HT, Email: vicky.liddemore@justice.gsi.gov.uk Tel: 020 7340 6556