

EXPLANATORY MEMORANDUM TO
THE DISCIPLINE OF JUDGES (DESIGNATION) ORDER 2008

2008 No. 2700

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

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

3.1 None

4. Legislative Background

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) establishes a new, unified tribunals structure with effect from 3 November 2008. Many judges in that new tribunals structure will hold offices that are not listed in Schedule 14 CRA. This Order designates certain offices in the new tribunals structure, so that they will be covered by the CRA disciplinary framework. For example, the offices of transferred-in judge, and transferred-in other member, of the First-tier Tribunal, and of the Upper Tribunal, are not listed in Schedule 14 CRA. Chambers Presidents, and Deputy Chambers Presidents, in the new tribunals structure will not be covered by Schedule 14 CRA, where the persons appointed to those offices already hold high judicial office. This Order designates those offices.

5. Territorial Extent and Application

5.1. This Order extends to all of 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

7.1. The purpose of this Order is to bring certain judges within the judicial disciplinary framework in the CRA. Many of those judges currently hold offices which are already included within Schedule 14 CRA, and are therefore currently covered by the CRA disciplinary framework. However, once the new tribunal structure under the TCE Act is in place, those judges will hold new offices (eg, transferred-in judge of the First-tier Tribunal, or Upper Tribunal) which are not in Schedule 14. The purpose of this Order is to ensure that judges in the new tribunals structure will be covered by the CRA disciplinary framework. If this Order were not made, the disciplinary provisions for office holders would fragment, resulting in different arrangements for office holders across the UK.

Consultation

7.2 There has not been any specific consultation on this Order, as the Order is largely consequential on the creation of the unified tribunals structure in the TCE Act 2007. The Government published a consultation document *Transforming Tribunals- Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007* (CP30/07) on 28 November 2007. A summary of the responses received was published in the Government's Response paper which can be found at <http://www.justice.gov.uk/publications/cp3007.htm>. The response paper confirmed that, in the light of the responses to the consultation, the Government intended to implement its proposals as set out in the Transforming Tribunals paper.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this Order as it has no additional impact on the public sector, business, charities or voluntary bodies.

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to: Pennie Turrell, Office for Judicial Complaints. Tel: 020-7189-2918
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