EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS OF THE CHARITY TRIBUNAL ORDER 2009

2009 No.

THE TRANSFER OF FUNCTIONS OF THE CONSUMER CREDIT APPEALS TRIBUNAL ORDER 2009

2009 No.

THE TRANSFER OF FUNCTIONS (ESTATE AGENTS APPEALS AND ADDITONAL SCHEDULED TRIBUNAL) ORDER 2009

2009 No.

THE TRANSFER OF FUNCTIONS (TRANSPORT TRIBUNAL AND APPEAL PANEL) ORDER 2009

2009 No.

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

2. Purpose of the instruments

2.1 These Orders transfer the entire jurisdictions of the Charity Tribunal, Consumer Credit Appeals Tribunal and Estate Agents Appeal Panel, and most of the jurisdiction of the Transport Tribunal, into the First-tier Tribunal and Upper Tribunal under the new tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 (c. 15). This is a further phase in a series of transfers of tribunals into the new tribunal structure.

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

3.1 None

4. Legislative Context

4.1 The jurisdictions of the Charity Tribunal, Consumer Credit Appeals Tribunal and Estate Agents Appeal Panel, and the bulk of the jurisdiction of the Transport Tribunal, are being transferred into the new tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act) as part of an ongoing series of transfers of tribunals.

4.2 Part 1 of the 2007 Act creates a new two tier tribunal system into which existing tribunals can be transferred or new appeal rights directed. Chapter 3 of Part 1 provides a number of order-making powers to effect the transfer of existing tribunals into this system. Section 3 establishes the First-tier Tribunal and the Upper Tribunal. Section 30 allows for the Lord Chancellor to transfer functions of tribunals listed in Schedule 6 of the 2007 Act to either or both of these two Tribunals.

4.3 The first tribunals transferred into the new structure in November 2008 and there were further transfers in April and June 2009. The orders that came into force to implement these transfers can be found at http://www.tribunals.gov.uk/Tribunals/Rules/rules.htm. Further transfer orders are planned before the end of 2009.

5. Territorial Extent and Application

5.1 These Orders extend to the UK save that some of the provisions in relation to the Transport Tribunal do not extend to Scotland.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Transfer of Functions of the Charity Tribunal Order 2009, the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009, the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 and the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7. 1 The need for reform of the tribunals system was set out in Sir Andrew Leggatt's Review 'Tribunals for Users – One System One Service' http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm which found that tribunals had grown in an almost entirely haphazard way and were not organised for the benefit of users.

7.2 The 2007 Act was enacted to implement Sir Andrew Leggatt's recommendation of a single tribunal system. It created 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. These Orders are made as part of the Government's ongoing commitment to implement the provisions of the 2007 Act and provide a new tribunals structure designed to meet the needs of users.

7.3 The Transfer of Functions of the Charity Tribunal Order 2009 transfers the entire jurisdiction of the Charity Tribunal into the First-tier Tribunal and the Upper Tribunal, with the First-tier Tribunal hearing cases except where it is decided by or under Tribunal Procedure Rules that the Upper Tribunal is to hear a case. The Order also abolishes the Charities Tribunal. A separate order will provide for this jurisdiction to be dealt with in the General Regulatory Chamber of the First-tier Tribunal and the Finance and Tax Chamber of the Upper Tribunal, and for onward appeals from decisions of the First-tier Tribunal in this jurisdiction to be heard in the Finance and Tax Chamber of the Upper Tribunal.

7.4 The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 transfers the entire jurisdiction of the Consumer Credit Appeals Tribunal into the First-tier Tribunal and abolishes the Tribunal. Similarly the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 transfers the entire

jurisdiction of the Secretary of State (which has previously been delegated to the Estate Agents Appeal Panel) into the First-Tier Tribunal. A separate order will provide for these jurisdictions to be dealt with in the General Regulatory Chamber of the First-tier Tribunal, and for onward appeals from both these jurisdictions to be heard in the Administrative Appeals Chamber of the Upper Tribunal.

7.5 The Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, the 'Transport Order', transfers part of the jurisdiction of the Transport Tribunal to the First-tier Tribunal and part to the Upper Tribunal. The jurisdiction that transfers to the First-tier Tribunal is generally appeals from the Driving Standards Agency, whilst the Upper Tribunal will hear appeals from Traffic Commissioners. A separate order will provide for this jurisdiction to be dealt with in the General Regulatory Chamber of the First-tier Tribunal or the Administrative Appeals Chamber of the Upper Tribunal, as the case may be, and for onward appeals from the First-tier Tribunal in this jurisdiction to be heard in the Administrative Appeals Chamber of the Upper Tribunal.

7.6 The Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 adds the London Service Permits Panel referred to in section 189(6) of the Greater London Authority Act 1989 to the table in Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007, bringing them within the scope of the Lord Chancellor's power to transfer tribunal functions to the First-tier Tribunal or the Upper Tribunal. The functions of this panel are transferred to the First-tier Tribunal in the Transport Order, which will be made after the amendment to Schedule 6 has come into force.

7.7 The Transport Order does not abolish the Transport Tribunal, which will retain jurisdiction to deal with appeals in relation to matters devolved to Scotland. The Transport Tribunal will also retain jurisdiction for appeals under sections 127A, 131E, 131F, 132, 132A and 132B of the Transport Act 2000 which have yet to be brought into force, and as yet no decision has been taken on where the appeal should lie.

- ***Consolidation***

7.7 No consolidation is necessary; the instruments remove the references to the current Tribunals and replace them with First-tier Tribunal or Upper Tribunal as appropriate, ensuring existing appeal rights remain.

8. Consultation outcome

8.1 The Consultation Paper Transforming Tribunals – Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007 (CP30/07) was published on 28 November 2007 with the response published on 19 May 2008. The consultation ended on 22 February 2008 with 140 responses received. The consultation and response are available at http://www.justice.gov.uk/publications/cp3007.htm

8.2 The Government set out in the consultation its intention to establish a General Regulatory Chamber in the First-Tier Tribunal and proposed to transfer the Charity Tribunal, Consumer Credit Appeals Tribunal, Estate Agents Appeal Panel and part of the jurisdiction of the Transport Tribunal to that Chamber (see paragraphs 166-176, 200 & 208 of the consultation). In response to the question of whether the general allocation of jurisdictions to Chambers was the right one, 67 respondents provided a response to the question and 48 thought the approach was correct (see page 11 of the response).

8.3 The Senior President of Tribunals, the Presidents of the each of the four tribunals and the Administrative Justice and Tribunals Council have been consulted on

the content of these Orders during their development. Other Government Departments have been consulted in relation to the proposed amendments to the legislation for which they have responsibility.

8.5 The Chief Executive of the Tribunals Service, Kevin Sadler, sent a letter explaining the changes to key stakeholders, professional bodies and relevant Government Departments in February 2009. Stakeholders of the Charity Tribunal were invited to give their views on where appeals from this jurisdiction should be heard and the majority agreed with the proposals. These stakeholders have also been invited to comment on the whether Tribunal Procedure Rules should provide for appeals to move straight to the Upper Tribunal as part of the General Regulatory Chamber rules consultation. Further details may be found at Page 5 section 8 of the consultation at: http://www.tribunals.gov.uk/Tribunals/Documents/Grc/GRConsultationPaper.pdf

9. Guidance

9.1 The respective Tribunals Service website pages have been updated with an explanation of the changes. Further updates to the website will take place closer to commencement, with more detailed explanations of the changes, updated forms and guidance material. Existing printed versions of guidance material will also be updated for each of the transferring jurisdictions. Existing Tribunals letters will also be updated to reflect the changes and to help appellants understand changes to the process.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. A Regulatory Impact Assessment (RIA) was prepared for the Tribunals, Courts and Enforcement Act. This can be found at: http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm (see pages 2 -14 for the tribunals element of the RIA)

10.4 In terms of these orders, the RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals bringing tribunals together in one organisation. No additional costs have been identified from the setting up of the First-Tier Tribunal or Upper Tribunal in the first 3 years (see paragraph 1.63 of the RIA), and no further costs have been identified to change this assumption.

11. Regulating small business

11.1 The legislation has no impact on small businesses.

12. Monitoring & review

12.1 The impact of these Orders and other Orders that transfer tribunals will be monitored and reviewed as part of the annual report of the Tribunals Service, which measures performance against key indicators. In addition an annual report by the Senior President of Tribunals on all relevant tribunal cases is published. This will include cases heard by the General Regulatory Chamber of the First-tier Tribunal and the Administrative Appeals and Finance and Tax Chambers of the Upper Tribunal, where the Senior President considers this appropriate.

13. Contact

Andrew Moseley at the Ministry of Justice Tel: 020 3334 6553 or email: andrew.moseley@tribunals.gsi.gov.uk can answer any queries regarding the instrument.