EXPLANATORY MEMORANDUM TO

THE TRANSFER OF TRIBUNAL FUNCTIONS (LANDS TRIBUNAL AND MISCELLANEOUS AMENDMENTS) 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 instrument

2.1 This Order transfers the jurisdiction of the Lands Tribunal into the Lands Chamber of the Upper Tribunal under the new tribunals structure created by the Tribunals, Courts and Enforcement Act 2007 (c. 15). The Order also abolishes the Lands Tribunal. 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 jurisdiction of the Lands Tribunal is being transferred into the Lands Chamber of the Upper Tribunal as part of an ongoing series of transfers of tribunals into the new tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act).

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 on 3 November 2008. The orders that came into force to implement this change 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 This instrument applies to the UK, because it amends references to the Lands Tribunal (a tribunal for England and Wales) in UK legislation.

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 Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) 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. This Order transfers the Lands Tribunal to the Upper Tribunal 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 Unlike the approach adopted by previous Orders under the 2007 Act, this Order is designed to apply the existing Lands Tribunal Rules 1996, substantially unchanged, to the Lands Chamber of the Upper Tribunal. Once transferred, the Rules will become Tribunal Procedure Rules and consequential amendments in Schedule 2 of the Order have been made to reflect this under section 31(7) of the 2007 Act. Article 4 and Schedule 2 paragraph 55 of this Order therefore provides for the citing of the Lands Tribunal Rules 1996 as the Tribunal Procedure (Upper Tribunal) (Land Chamber) Rules 2009.

7.4 The order also makes consequential amendments to legislation in Schedules 1, 2 & 3 replacing the Lands Tribunal with the Lands Chamber of the Upper Tribunal, together with other minor amendments where necessary to effect the transfer.

7.5 The Order also provides for minor amendments that do not relate to the transfer of the Lands Tribunal. These make minor changes or corrections to legislation, the need for which has emerged since the earlier transfers in November 2008 and April 2009, or which relate to the implementation of other provisions of the 2007 Act. A full list of the changes and an outline of their effect can be found in the Order in the Explanatory Note under Consequential provisions.

- ***Consolidation***

7.6 No consolidation is necessary; the instrument removes the references to the Lands Tribunal and replaces it with Upper Tribunal ensuring existing appeals 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 its intention in the consultation to preserve and enhance the special qualities of the Lands Tribunal within the new structure with priority given to continuity (see paragraphs 184-185 on page 38 of the consultation). It proposed a three chamber structure for the Upper Tribunal recreating the Lands Tribunal substantially unchanged as the Lands Chamber of the Upper Tribunal. The consultation did not ask a specific question on the transfer of the Lands Tribunal. However, 61 respondents provided a response on the proposals for the three-chamber structure for the Upper Tribunal and 52 were in support.

8.3 The Senior President of the Tribunals, the President of the Lands Tribunal and the Administrative Justice and Tribunals Council have been consulted on the content of this Order during its development. The Lord Chancellor has consulted with the Lord Chief Justice in respect of the amendment to the Judicial Appointments Order 2008 in Schedule 2.

8.4 Other Government Departments have been consulted in relation to the proposed amendments to the legislation listed in Schedules 1 & 2 for which they have responsibility. Where existing amendments to legislation were being drafted, amendments were withdrawn from this Order and will be made in the relevant instrument. Consequential amendments to Church of England measures in Schedule 3 were agreed with the Church of England.

8.5 Lands Tribunal stakeholders have received correspondence outlining the background to the change and explaining the implications.

9. Guidance

9.1 No guidance has been provided as users should see little change in procedure at the point of transfer.

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)

In terms of this order, 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 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 this SI 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 Lands Chamber of the Upper Tribunal where the Senior President considers this appropriate.

13. Contact

Gillian Brooks at the Ministry of Justice Tel: 020 3334 3104 or email: Gillian.brooks@justice.gsi.gov.uk can answer any queries regarding the instrument.