EXPLANATORY MEMORANDUM TO

THE TRANSFER OF TRIBUNAL FUNCTIONS (MOBILE HOMES ACT 2013 AND MISCELLANEOUS AMENDMENTS) ORDER 2014

2014 No. [DRAFT]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Mobile Homes Act 2013 ("2013 Act") transferred certain jurisdiction on mobile homes from magistrates' courts to residential property tribunals by amending the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). Since the 2013 Act was passed, residential property tribunals in relation to land in England have become part of the Property Chamber of the First-tier Tribunal. This Order accordingly transfers this jurisdiction to the First-tier Tribunal and Upper Tribunal.

2.2 This instrument also amends the First-tier Tribunal (Property Chamber) Fees Order 2013 (the "2013 Fees Order") to prescribe fees payable for applications to the Property Chamber of the First-tier Tribunal (the "Property Chamber") under the 1960 Act.

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

Fees

3.1 The consequential amendments include the introduction of fees and for this reason the consent of Treasury Commissioners is provided for.

4. Legislative Context

4.1 The 2013 Act received Royal Assent on 26 March 2013. As the Property Chamber of the First-tier Tribunal had not then been established, the 2013 Act referred to "residential property tribunals" or "tribunal".

4.2 The Property Chamber was established on 1 July 2013 when the Transfer of Tribunal Functions Order 2013 (S.I. 2013/1036) transferred (amongst other things) the functions of residential property tribunals into the unified tribunal structure. This further Transfer Order has been made to transfer the functions subsequently conferred on residential property tribunals by the 2013 Act as from 1 April 2014.

4.3 Schedule 1 of the Order makes consequential amendments to the 1960 Act to transfer, in relation to land in England, the jurisdiction and powers from residential property tribunals to the unified tribunal structure.

4.4 Schedule 2 makes further miscellaneous and consequential amendments to delegated legislation relating to the transfers of functions. The amendments to the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 (S.I. 1997/194) correct some omissions from the Transfer of Tribunal Functions Order 2013. Schedule 2 also amends the 2013 Fees Order to prescribe the fees payable in cases under the 1960 Act.

4.5 The Mobile Homes Act 2013 (Commencement and Saving Provision) (England) Order 2014,[1] which came into force on 1 April 2014, provides that existing cases in magistrates' courts will continue in those courts and will not be transferred over to tribunals.

Fees

4.6 The 2013 Act inserted provisions in the Mobile Homes Act 1983 (c. 34) enabling further applications to be made in the Property Chamber in relation to mobile home sites.

4.7 Applications made under Schedule 1 of the Mobile Homes Act 1983 can already be made in the Property Chamber, currently without the requirement to pay a fee. Applications made under regulations 10 and 17 of the Mobile Homes (Site Rules) (England) Regulations 2014 are newly created and fees will payable in respect of these applications from the outset.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Shailesh Vara has made the following statement regarding Human Rights:

'In my view the provisions of the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014 are compatible with the Convention rights.'

7. Policy background

Mobile Homes

7.1 The 2013 Act amended the provisions of the 1960 Act relating to local authority licensing of mobile home sites, which was largely ineffective and outdated. The new licensing regime, which came into force on 1 April 2014, enables local authorities to better

[1] http://www.legislation.gov.uk/uksi/2014/816/contents/made

enforce licensing requirements. In doing so it conferred a new right of appeal on site owners to a residential property tribunal against local authority decisions. At the same time existing appeal rights under the 1960 Act were transferred from magistrates' courts to that tribunal.

Fees

7.2 The general policy on fee charging is set out in HM Treasury's publication "Managing Public Money – Fees, Charges and Levies"[2]. It requires every fee-charging service to have a financial objective for the level of cost recovery agreed between the responsible minister and HM Treasury. The normal policy is that fees should be set at a level to recover no more than the full cost of providing the service. The fees in this instrument will apply to applications which will follow similar processes at the tribunal to many of the existing applications where a fee of £155 is charged. Therefore, the fees for these applications have been set at the same level of £155.

7.3 These fees are for making applications to appeal against licensing decisions made by local authorities under the 1960 Act.

8. Consultation outcome

8.1 The Lord Chancellor has consulted the Senior Present of Tribunals in accordance with section 42(5) of the Tribunals, Courts and Enforcement Act 2007 before making this Order.

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in the Property Chamber.

10. Impact

10.1 The new fees inserted in the 2013 Fees Order and the simplification of existing fees by this instrument are expected to have a modest impact.

10.2 This instrument does not introduce fees payable by the public sector.

10.3 As the impact of these fee changes is considered to be minimal, a full Impact Assessment has not been prepared.

11. Regulating small business

11.1 HMCTS does not collect information about property chamber appellants that would make it possible to classify them as belonging to a particular group or to estimate what percentage of users are small businesses. It is therefore not possible to estimate the effect in

[2] www.gov.uk/government/publications/managing-public-money

isolation on small firms. However, the Ministry of Justice believes that most site owners would be classed as small businesses and they will bear the brunt of the impact. Where these applications follow similar procedures, site owners' fees have been set at the same amount as those payable by other property owners making applications in the Property Chamber.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from tribunals and customers and the monitoring of fee income and volumes

13. Contact

Paula Waldron at the Ministry of Justice Tel: 0203 334 4027 or email: paula.waldron@justice.gsi.gov.uk can answer any queries regarding the consequential amendments parts of this instrument.

Bill Dowse at the Ministry of Justice Tel 0203 334 6099 or email bill.dowse@justice.gsi.gov.uk can answer any queries about the amendments to The First-tier Tribunal (Property Chamber) Fees Order 2013.