EXPLANATORY MEMORANDUM TO

THE AMENDMENTS TO SCHEDULE 6 OF THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 ORDER 2013

2013 No. [DRAFT]

&

THE TRANSFER OF TRIBUNAL FUNCTIONS ORDER 2013

2013 No. [DRAFT]

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 The Amendments to Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 Order 2013 and The Transfer of Tribunal Functions Order 2013 (the Orders) are part of a series that facilitate the transfer of the functions of a range of tribunals into the First-tier Tribunal and Upper Tribunal. If approved, the new Property Chamber of the First-tier Tribunal will come into being on 1st July 2013.

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

3.1 Paragraph 22 of Schedule 1 (inserting section 79A (6) and (7) of the Rent Act 1977) alters the type of power used for prescribing one particular fee from Regulations to Order and inserts a negative resolution procedure. A similar fee charging provision in section 42 of the Housing Act 1988 is an Order making power. Orders are the usual form of delegated legislation under which the Lord Chancellor charges fees in courts and tribunals.

3.2 The Transfer Order comes into force on 1st July 2013. In the period between the Lord Chancellor making the Transfer Order, following parliamentary approval, and 1st July 2013, other delegated legislation needs to be made and laid so as to come into force on that same date. We rely upon section 13 and 23(2) of the Interpretation Act 1978 as enabling certain additional delegated powers to be exercised in that interim period, which are expedient to ensure that the new rules of procedure and fees fully support the functions of the new Property Chamber of the First-tier Tribunal from the outset.

3.3 The policy and drafting approach developed in previous transfer orders and maintained in this Order regarding onward appeal rights is as follows.

3.3.1 Where the onward appeal from decisions of 'transferring in' tribunals is currently limited to a point of law, the scope of that limitation is maintained.

3.3.2 Where the onward appeal is currently unlimited, (i.e. is not limited to a point of law), the breadth of the appeal is not reduced. Such appeals often involve issues of valuation. The Upper Tribunal already hears unlimited onward appeals from residential property tribunals and leasehold valuation tribunals, in consequence of the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Unlimited onward

appeal rights also exist from most decisions of the Adjudicator to Her Majesty's Land Registry.

3.3.3 The element of the onward appeal which consists of an appeal on a point of law is amended so that the right of appeal to the Upper Tribunal will be the right conferred by section 11 of the 2007 Act.

3.3.4 The wider element of the onward appeal remains in the statute that conferred that right of appeal originally. Amendments provide that that wider appeal element attracts section 12(2) to (4) of the 2007 Act (i.e. powers relevant to remedies and outcomes).

3.3.5 Section 11 of the 2007 Act imposes a requirement of permission to appeal from the First-tier Tribunal to the Upper Tribunal. Amendments provide for this requirement to apply to the entire breadth of the onward appeal, even where the right of appeal from the First-tier Tribunal decision goes wider than a point of law.

4. Legislative Context

4.1 The Amendments to Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 Order 2013 provides for rent assessment committees to be added to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act".) The Amendments Order also moves the entry relating to the Agricultural Land Tribunal from Part 4 to Part 1 of the Schedule (for areas in England) and to Part 7 of the Schedule (for Wales.)

4.2 This will then enable the Lord Chancellor to:

- transfer the functions in England of those committees to the First-tier Tribunal and Upper Tribunal under powers conferred by section 30 of the 2007 Act;
- transfer the functions in England of Agricultural Land Tribunals to the First-tier Tribunal only under powers conferred by section 30 of the 2007 Act; and
- transfer the right of appeal from decisions of those committees in Wales and the ALT in Wales from the High Court to the Upper Tribunal.

4.3 The Transfer of Tribunal Functions Order 2013 transfers the functions of:

- Rent Assessment Committees (which sit as Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals and Rent Assessment Committees) in England;
- Agricultural Land Tribunals in England; and
- the Adjudicator to Her Majesty's Land Registry in England and Wales

into the unified tribunal structure created by the 2007 Act.

4.4 Most cases will be heard in the newly created Property Chamber of the First-tier Tribunal. However, jurisdiction over matters previously heard by rent assessment committees will be conferred on both the First-tier Tribunal and the Upper Tribunal. The decision as to which of them exercises jurisdiction is left to be determined under Tribunal Procedure Rules.

5. Territorial Extent and Application

5.1 The Amendments to Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 Order 2013 applies to England and Wales.

5.2 The Transfer of Tribunals Functions Order 2013 applies to England and Wales.

5.3 As rent assessment committees in Wales and the agricultural land tribunal in Wales are devolved tribunals in relation to which Welsh Ministers have functions, those committees in Wales and the tribunals in which they sit are not transferred in to the unified structure as Welsh Ministers do not wish that to occur. However, Welsh Ministers have requested that appeals from the decisions of rent assessment committees and the ALT in Wales should be transferred from the High Court to the Upper Tribunal.

5.4 The functions of the Adjudicator to HM Lands Registry extend to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary, Helen Grant, has made the following statement regarding Human Rights:

'In my view the provisions of The Amendments to Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 Order 2013 and The Transfer of Tribunal Functions Order 2013 are compatible with the Convention rights'.

7. Policy background

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

7.1 Sir Andrew Leggatt's review, 'Tribunals for Users: One System, One Service', (2001), and the subsequent White Paper, 'Transforming Public Services: Complaints, Redress and Tribunals' (2004) set out a programme for developing a unified tribunals system. The 2007 Act was enacted to implement Sir Andrew Leggatt's recommendation of a single tribunal system. These Orders are made as part of the Government's ongoing commitment to put the provisions of the 2007 Act into practice and provide a tribunals structure designed to meet the needs of users.

7.2 The 2007 Act established a two tier tribunal system with a First-tier and an Upper Tribunal and provided a number of powers to effect the transfer of existing tribunals or direct new appeal rights into this system. Section 30 of the Act allows the Lord Chancellor to transfer functions of tribunals listed in Schedule 6 of the 2007 Act to either or both of the two Tribunals.

7.3 When the Property Chamber is launched on the 1st July 2013 it will be the seventh chamber of the First-tier Tribunal and will bring together jurisdictions concerned with property, housing and lands registration.

7.4 The Transfer of Tribunal Functions Order 2013 transfers the functions of the Rent Assessment Committees, (which sit as Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals and Rent Assessment Committees), the Agricultural Land Tribunals and the Adjudicator to Her Majesty's Land Registry into the Property Chamber of the First-tier Tribunal. This has the result of abolishing the office of Adjudicator to the Lands Registry and limiting the functions of the other two Tribunals to Wales.

7.5 The policy intention is to provide a quality service through the development of more coherent and consistent procedures across the jurisdictions that are transferring

into the Chamber. This will also support more flexibility in the deployment of existing judiciary and improved judicial career paths. The new Property Chamber will operate with one set of procedural rules which will be made by the Tribunal Procedure Committee for all jurisdictions transferring in; these jurisdictions will be clearly independent of the decision-making Government departments.

7.6 The Transfer of Tribunal Functions Order 2013 amends the references to the current tribunals so as to replace them (to the extent mentioned above) with references to the First-tier Tribunal and Upper Tribunal, as appropriate. It also transfers in the judiciary and other members of the current tribunals, and makes consequential amendments to legislation ensuring continuity of existing appeal rights and enforcement powers and eliminating provisions for which the 2007 Act already contains provision.

7.7 The Transfer of Tribunal Functions Order 2013 sets out transitional provisions covering matters such as the appeal rights and procedures for handling current cases that are before any of the tribunals when they transfer into the unified structure.

7.8 The Senior President of 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 and agreed to the proposed amendments to the legislation for which they have responsibility.

8. Consultation outcome

8.1 In 2002, the Law Commission was asked to consider the position of tribunals concerned with land, valuation and housing. In its 2003 report: 'Land, Valuation and Housing Tribunals: The Future (Law Com No 281)' it recommended that property tribunals should be grouped together into a generic Property and Valuation Tribunal with the right of appeal to a reformed Lands Tribunal.

8.2 The public Consultation 'Transforming Tribunals – Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007' ran from 28 November 2007 until 22 February 2008. One hundred and forty responses were received and the Government response was published on 19 May 2008.

8.3 This Consultation set out the Government's long-term vision for property tribunals. The Government's aim was for a two tier structure, providing a comprehensive and expert forum for all land, housing and valuation disputes.

8.4 The First-tier Tribunal should hear first-instance cases and appeals against administrative decisions. The work should be allocated to a chamber dedicated to land, property and housing matters so that a proper level of expertise can be guaranteed. The role of the Upper Tribunal should predominantly be an expert appellate body, dealing authoritatively with issues of law and general practice. A majority of the respondents who answered the question about the creation of a Property Chamber agreed with the proposals.

9. Guidance

9.1 The respective MoJ website pages have been updated with an explanation of the changes. Further updates to the website will take place closer to the launch of the Chamber, 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 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.

11. Regulating small business

11.1 The legislation does not apply to small business.

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 Her Majesty's Courts and Tribunals Service (HMCTS), which measures performance against key indicators. In addition the Senior President of Tribunals publishes an annual report on all relevant tribunal cases which will include cases heard by the jurisdictions of the Property Chamber.

13. Contact

13.1 Paula Waldron at the Ministry of Justice can answer any queries regarding the instrument. Telephone 0203 334 4027 or email: paula.waldron@justice.gsi.gov.uk