EXPLANATORY MEMORANDUM TO

THE TRANSFER OF TRIBUNAL FUNCTIONS (TRANSPORT TRIBUNAL) ORDER 2014

2014 No. [DRAFT]

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

2. Purpose of the instrument

2.1 This Order transfers the Bus Quality Contract Scheme jurisdiction of the Transport Tribunal into the Upper Tribunal under the tribunal structure created by the Tribunals, Courts, and Enforcement Act 2007 (c. 15) ("the 2007 Act").

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

3.1 None.

4. Legislative Context

4.1 Part 1 of the 2007 Act created a new two tier tribunal structure. The First-tier Tribunal and the Upper Tribunal were established under section 3 of the 2007 Act. Order making powers were provided under Part 1 of the 2007 Act to enable functions of existing tribunals to be transferred into the new structure.

4.2 Article 2 transfers the functions of the Transport Tribunal which relate to Quality Contract Schemes to the Upper Tribunal. The listed functions were added to Part 2 of the Transport Act 2000 (c. 38) ("the 2000 Act") by the Local Transport Act 2008 (c. 26).

5. Territorial Extent and Application

5.1 The Order extends to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Shailesh Vara MP, has made the following statement regarding Human Rights:

'In my view the provisions of the Transfer of Tribunal Functions (Transport Tribunal) Order 2014 are compatible with the Convention rights.'

7. Policy background

7.1 This instrument supports the Government's continuing commitment to implement the provisions of the 2007 Act to provide a unified tribunal structure designed to meet the needs of users.

7.2 A Quality Contract Scheme (QCS) is a scheme made under the Transport Act 2000, whereby the local transport authority resumes responsibility for determining what local bus services will run in previously unregulated, defined areas; other than exceptions specifically set out, no other bus services are permitted. To do this, the authority must undertake a consultation exercise. If the local authority still wishes to pursue a QCS after consultation, its final proposal must then satisfy a public interest test.

7.3 Statutory consultees have a right of appeal to the Transport Tribunal against the local authority's decision to make the scheme. The local authority also has power to apply to the Tribunal to vary or revoke a QCS scheme.

7.4 The Ministry has been informed that there is a QCS proposal being taken forward in Tyne and Wear and it is desirable that the appellate jurisdiction should have been transferred in time for any resulting appeal.

7.5 The scheme is not presently in force in Wales but if Welsh Minsters decided to implement the QCS provisions in relation to Wales, the amendments made by this Order would result in any appeals being dealt with in the Upper Tribunal.

7.6 Most of the jurisdiction of the Transport Tribunal was transferred to the First-tier Tribunal and the Upper Tribunal in September 2009. The Transport Tribunal remains in existence and now only has a very limited jurisdiction. There have been no appeals to the Transport Tribunal since 2009.

8. Consultation outcome

8.1 The Department for Transport (DfT) carried out a twelve week consultation which closed on 7th October 2009, inviting views on a package of draft regulations, guidance, and other issues relating to quality contracts schemes from local authorities, transport operators, trade unions, bus passenger representative groups, traffic commissioners and other interested parties. The consultation paper included a question seeking views on the arrangements for appeals against local authority decisions.

8.2 Opinions varied as to where QCS appeals should be assigned in the unified tribunal system. The dominant opinion amongst local authority respondents, two passenger representative groups, a trade union, and the senior traffic commissioner was that all QCS appeals should be heard by the Upper Tribunal. The consensus amongst bus operators was that appeals should be heard in the first instance by the First-tier Tribunal, with an onward right of appeal to the Upper Tribunal. One local authority respondent favoured a hybrid approach whereby the right of

appeal would lie to the Upper Tribunal if the QCS board had published a favourable opinion about the proposed scheme, and to the First-Tier Tribunal if not. One bus operator expressly opposed this option, feeling that it provided insufficient clarity.

8.3 The Government response published in December 2009 advised that QCS appeals would be heard by the Upper Tribunal. The link can be found here: http://webarchive.nationalarchives.gov.uk/tna/20100927131008/http:/www.dft.gov.uk/consultations/archive/2009/qcs/.

9. Guidance

9.1 HM Courts & Tribunals Service (HMCTS) produces guidance for all tribunal jurisdictions which is issued to parties at key stages of the appeals process and is available on the HMCTS website.

9.2 The guidance on the Upper Tribunal section of the Justice website will be updated in December 2014 to include information about the arrangements for QCS appeals.

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 As the impact of the transfer of tribunal functions into the Upper Tribunal is considered to be minimal, a full Impact Assessment has not been prepared.

11. Regulating small business

11.1 The Order does not impact upon small businesses.

12. Monitoring & review

12.1 The impact of any changes are constantly monitored by way of feedback from tribunals and customers.

13. Contact

13.1 Vijay Parkash at the Ministry of Justice can answer any queries regarding the instrument. Tel: 020 3334 4471 or email: Vijay.Parkash@hmcts.gsi.gov.uk.