EXPLANATORY MEMORANDUM TO

THE QUALIFICATIONS FOR APPOINTMENTS OF MEMBERS TO THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (AMENDMENT) ORDER 2012

2012 No. 897

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 The order amends the grounds of eligibility for appointment as a non-judge member of the First-tier Tribunal ("FTT") or the Upper Tribunal. It allows for the appointment of members who have substantial experience in environmental matters.

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

3.1 None.

4. Legislative Context

4.1 The Tribunals, Courts and Enforcement Act 2007 (paragraph 2(2) of Schedule 2 and paragraph 2(2) of Schedule 3) provides that a person is eligible for appointment as a non-judge member of the FTT or Upper Tribunal only if the person has qualifications prescribed in an order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals. This instrument amends the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 (SI 2008/2692) ("the Qualifications Order").

5. Territorial Extent and Application

5.1 This instrument extends to the UK.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Under the EC Nitrates Directive, there is a requirement to designate land that drains to "polluted waters" as a Nitrate Vulnerable Zone (NVZ) and to apply an Action Programme of measures to farmers in these zones. When the areas are proposed farmers are given the right to appeal against the designation.

7.2 The designation of NVZs must be reviewed by the Department for Environment, Food and Rural Affairs (DEFRA) every four years. The next review is due to take place in 2012. Appeals will now go to the General Regulatory Chamber of the FTT and will be heard during 2012 to allow the new designations to come into force on 1st January 2013.

7.3 This amendment to the Qualifications Order enables the appointment of fee-paid specialist members to the FTT to consider appeals against the designation of land as NVZs.

8. Consultation outcome

8.1 Due to the minor nature of the amendment made, no public consultation was undertaken in relation to this instrument.

9. Guidance

9.1 This instrument, and the Qualifications Order which it amends, are part of a series of statutory instruments relating to the unified tribunals structure which was set up under the Tribunals, Courts and Enforcement Act 2007. Separate guidance relating to this order is not planned, but general information about tribunals can be found on the Ministry of Justice website at http://www.justice.gov.uk/tribunals.

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 2007. This can be found at:

http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm

10.4 The RIA confirmed that the legislation would create a new flexible overarching statutory framework for tribunals, bringing tribunals together in one organisation.

11. Regulating small business

11.1 The legislation does not impact on small businesses.

12. Monitoring & review

12.1 The Ministry of Justice will keep the Qualifications Order continually under review.

13. Contact

Vijay Parkash, Tribunals Transfer and New Jurisdictions Team, **Vijay.Parkash@hmcts.gsi.gov.uk**, telephone: 0208 831 3565, can answer any queries regarding this instrument.