

2008 No. 2833**TRIBUNAL AND INQUIRIES****The Transfer of Tribunal Functions
Order 2008***Made* - - - - - *29th October 2008**Coming into force* - *3rd November 2008*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(1), (2) and (9), 32(3) and (5), 33(2) and (3), 34(2) and (3), 37(1), 38 and 145 of, and paragraph 30 of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007^(a). The Scottish Ministers have consented to the making of this order in so far as their consent is required by section 30(7) of that Act.

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 49(5) of that Act.

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Transfer of Tribunal Functions Order 2008 and comes into force on 3rd November 2008.

(2) A reference in this Order to a Schedule by a number alone is a reference to the Schedule so numbered in this Order.

(3) Subject as follows, this Order extends to England and Wales, Scotland and Northern Ireland.

(4) Except as provided by paragraph (5) or (6), an amendment, repeal or revocation of any enactment by any provision of Schedule 3 extends to the part or parts of the United Kingdom to which the enactment extends.

(5) For the purposes of article 3(3)(a) and (b) the following amendments, repeals and revocations made by the provisions of that Schedule do not extend to Scotland—

- (a) paragraphs 145 to 147;
- (b) paragraph 150;
- (c) paragraph 151(d);
- (d) paragraph 152;
- (e) paragraph 154;
- (f) paragraphs 167 to 173; and
- (g) paragraph 228(h), (l), (n) and (r).

(6) The amendments and repeals made by paragraphs 198 to 201 of Schedule 3 do not extend to Scotland.

Additions to the list of tribunals in Schedule 6

2. In Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 (tribunals for the purposes of section 30), insert the following entries at the appropriate places—

“Claims Management Services Tribunal Section 12 of the Compensation Act 2006 (c. 29)”

“Gender Recognition Panel Section 1(3) of the Gender Recognition Act 2004 (c. 7)”

(a) 2007 c. 15.

“Tribunal Section 704 of the Income Tax Act 2007 (c. 3)”

Transfer of functions of certain tribunals

3.—(1) Subject to paragraph (3), the functions of the tribunals listed in Table 1 of Schedule 1 are transferred to the First-tier Tribunal.

(2) Subject to paragraph (3), the functions of the tribunals listed in Table 2 of Schedule 1 are transferred to the Upper Tribunal.

(3) The following functions are not transferred—

- (a) the determination by an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998(a) of an appeal which is referred to such tribunal by the Scottish Ministers, or the Secretary of State on their behalf, pursuant to section 158 (appeal tribunals) of the Health and Social Care (Community Health and Standards) Act 2003(b) (“the 2003 Act”); and
- (b) the determination by a Social Security Commissioner of an appeal made under section 159 (appeal to social security commissioner) of the 2003 Act against a decision falling within sub-paragraph (a).

Abolition of tribunals transferred under section 30(1)

4. The tribunals listed in Table 1 and Table 2 of Schedule 1 are abolished except for—

- (a) appeal tribunals constituted under Chapter 1 of Part 1 of the Social Security Act 1998 in respect of Scotland for the purposes of the function described in article 3(3)(a); and
- (b) the Social Security Commissioners in respect of Scotland for the purposes of the function described in article 3(3)(b).

Transfer of persons into the First-tier Tribunal and the Upper Tribunal

5.—(1) A person holding an office listed in a table in Schedule 2 who was, was a member of, or was an authorised decision-maker for, a tribunal listed in the corresponding table in Schedule 1 immediately before the functions of that tribunal were transferred under article 3 shall hold the corresponding office or offices.

(2) In paragraph (1) “corresponding” means appearing in the corresponding entry in the table below.

<i>Table in Schedule 1</i>	<i>Table in Schedule 2</i>	<i>Office or offices</i>
Table 1	Table 1	Transferred-in judge of the First-tier Tribunal
Table 1	Table 2	Transferred-in other member of the First-tier Tribunal
Table 1	Table 3	Transferred in judge of the First-tier Tribunal and deputy judge of the Upper Tribunal
Table 2	Table 4	Transferred-in judge of the Upper Tribunal
Table 1 or 2	Table 5	Transferred-in other member of the Upper Tribunal

(a) 1998 c. 14.

(b) 2003 c. 43. This function of Scottish Ministers can be exercised by the Secretary of State pursuant to Scotland Act 1998 (Agency Arrangements) (Specifications) (No 3) Order 2006 (S.I. 2006/3338).

Appeal to Upper Tribunal from tribunals in Wales

6.—(1) An appeal against a decision of a tribunal listed in paragraph (2) lies to the Upper Tribunal.

(2) The tribunals referred to in paragraph (1) are—

- (a) the Mental Health Review Tribunal for Wales established under section 65 of the Mental Health Act 1983(a); and
- (b) the Special Educational Needs Tribunal for Wales established under section 336ZA of the Education Act 1996(b).

Appeal to Upper Tribunal from tribunals in Scotland

7. An appeal against a decision of the Pensions Appeal Tribunal in Scotland under section 5 of the Pensions Appeal Tribunals Act 1943(c) (assessment decision) lies to the Upper Tribunal.

Appeal to Upper Tribunal from tribunals in Northern Ireland

8. An appeal against a decision of the Pensions Appeal Tribunal in Northern Ireland under section 5 of the Pensions Appeal Tribunals Act 1943 (assessment decision) lies to the Upper Tribunal.

Minor, consequential and transitional provisions

9.—(1) Schedule 3 contains minor, consequential and supplemental amendments, and repeals and revocations as a consequence of those amendments.

(2) Schedule 4 contains transitional provisions.

By authority of the Lord Chancellor

29th October 2008

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

(a) 1983 c. 20. Section 65 was amended by paragraph 107 of Schedule 1 to the Health Authorities Act 1995 (c. 17), and is further amended by section 38 of the Mental Health Act 2007 (c. 12) and by Schedule 3 to this Order.

(b) 1996 c. 56. Section 336ZA was inserted by paragraph 5 of Schedule 18 to the Education Act 2002 (c. 32). Schedule 3 to this Order omits section 336ZA and amends section 333 so that it refers to the Special Educational Needs Tribunal to Wales.

(c) 1943 c. 39. Section 5 was amended by section 23 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) and section 16(3) of the Social Security Act 1980 (c. 30), and is further amended by Schedule 3 to this Order.

SCHEDULE 1

Articles 3, 4 and 5

Functions transferred to the First-tier Tribunal and Upper Tribunal

Table 1: Functions transferred to the First-tier Tribunal

<i>Tribunal</i>	<i>Enactment</i>
Adjudicator	Section 5 of the Criminal Injuries Compensation Act 1995 (c. 53)
Appeal tribunal	Chapter 1 of Part 1 of the Social Security Act 1998 (c. 14)
Asylum Support Adjudicators	Section 102 of the Immigration and Asylum Act 1999 (c. 33)
Mental Health Review Tribunal for a region of England	Section 65(1) and (1A)(a) of the Mental Health Act 1983 (c. 20)
Pensions Appeal Tribunal in England and Wales	Section 8(2) of the War Pensions (Administrative Provisions) Act 1919 (c. 53) and paragraph 1(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)
Special Educational Needs and Disability Tribunal	Section 28H of the Disability Discrimination Act 1995 (c. 50) and section 333 of the Education Act 1996 (c. 56) and
Tribunal, except in respect of its functions under section 4 (c. 14). of the Safeguarding Vulnerable Groups Act 2006 (c. 47)	Section 9 of the Protection of Children Act 1999 (c. 14)

Table 2: Functions transferred to the Upper Tribunal

<i>Tribunal</i>	<i>Enactment</i>
Child Support Commissioner	Section 22 of the Child Support Act 1991 (c. 48)
Social Security Commissioner	Schedule 4 to the Social Security Act 1998 (c. 14)
Tribunal, in respect of its functions under section 4 of the Safeguarding Vulnerable Groups Act 2006 (c. 47)	Section 9 of the Protection of Children Act 1999 (c. 14)

SCHEDULE 2

Article 5

Persons transferred as judges and members of the First-tier Tribunal and Upper Tribunal

Table 1: Members becoming transferred-in judges of the First-tier Tribunal

<i>Tribunal Member</i>	<i>Enactment</i>
A legal member of the Criminal Injuries Compensation Appeals Panel	Section 5 of the Criminal Injuries Compensation Act 1995 (c. 53) and the Criminal Injuries Compensation Schemes
A legally qualified panel member	Section 6 of the Social Security Act 1998 (c. 14)
The Deputy Chief Asylum Support Adjudicator or an adjudicator	Section 102 of and paragraph 1(a) and (c) of Schedule 10 to the Immigration and Asylum Act 1999 (c. 33)
A legal member	Paragraph 1(a) of Schedule 2 to the Mental Health Act 1983 (c. 20)
The Deputy President of Pensions Appeal Tribunals or a legally qualified member	Paragraphs 2A(1)(a) and 2B(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)
A member of the chairmen's panel	Section 333(2)(b) of the Education Act 1996 (c. 56)
A member of the chairmen's panel	Paragraph 1(1)(a) of the Schedule to the Protection of Children Act 1999 (c. 14)

Table 2: Members becoming transferred-in other members of the First-tier Tribunal

<i>Tribunal Member</i>	<i>Enactment</i>
A member of the Criminal Injuries Compensation Appeals Panel other than the Chairman or a legal member	Section 5 of the Criminal Injuries Compensation Act 1995 (c. 53) and the Criminal Injuries Compensation Schemes
A financially qualified panel member, a medically qualified panel member or a panel member with a disability qualification	Section 6 of the Social Security Act 1998 (c. 14)
A medical member or other member	Paragraph 1(b) or (c) of Schedule 2 to the Mental Health Act 1983 (c. 20)
A medically qualified member, a member with knowledge or experience of service, or other member	Paragraph 2A(1)(b), (c) or (d) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)
A member of the lay panel	Section 333(2)(c) of the Education Act 1996 (c. 56)
A member of the lay panel, other than a member in Table 5	Paragraph 1(1)(c) of the Schedule to the Protection of Children Act 1999 (c. 14)

Table 3: Members becoming transferred-in judges of the First-tier Tribunal and deputy judges of the Upper Tribunal

<i>Tribunal Member</i>	<i>Enactment</i>
The Chairman	Section 5(3)(b) of the Criminal Injuries Compensation Act 1995 (c. 53) and the Criminal Injuries Compensation Schemes
The President	Section 5 of the Social Security Act 1998 (c. 14)
The Chief Asylum Support Adjudicator	Section 102 of and paragraph 1(b) of Schedule 10 to the Immigration and Asylum Act 1999 (c. 33)
A chairman of a Mental Health Review Tribunal	Paragraph 3 of Schedule 2 to the Mental Health Act 1983 (c. 20)
A President of Pensions Appeal Tribunals	Paragraph 2B(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)
A President	Section 333(2)(a) of the Education Act 1996 (c. 56)
The President	Paragraph 1(1)(a) of the Schedule to the Protection of Children Act 1999 (c. 14)
The Deputy President	Appointed as a member of the chairmen's panel under paragraph 1(1)(b) of the Schedule to the Protection of Children Act 1999 (c. 14) and also appointed as deputy president of the Tribunal
A deputy Child Support Commissioner	Paragraph 4 of Schedule 4 to the Child Support Act 1991 (c. 48)
A deputy Commissioner	Paragraph 1(2) of Schedule 4 to the Social Security Act 1998 (c. 14)

Table 4: Members becoming transferred-in judges of the Upper Tribunal

<i>Tribunal Member</i>	<i>Enactment</i>
The Chief Child Support Commissioner or a Child Support Commissioner	Section 22 of the Child Support Act 1991 (c. 48)
The Chief Social Security Commissioner or a Social Security Commissioner	Paragraph 1 of Schedule 4 to the Social Security Act 1998 (c. 14)

Table 5: Members becoming transferred-in other members of the Upper Tribunal

<i>Tribunal Member</i>	<i>Enactment</i>
A member of the lay panel who was appointed on the ground that the member satisfied the requirements referred to in regulation 41(1) of the Protection of Children Act Tribunal Regulations 2000 (S.I. 2000/2619) or regulation 3(1)(a) or (b) of the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (S.I. 2002/816)	Paragraph 1(1)(c) of the Schedule to the Protection of Children Act 1999 (c. 14)

[Schedule 3 makes amendments to various Acts contained with these volumes.]

SCHEDULE 4

Article 6

TRANSITIONAL PROVISIONS

Transitional provisions

1. Subject to article 3(3)(a) any proceedings before a tribunal listed in Table 1 of Schedule 1 which are pending immediately before 3rd November 2008 shall continue on and after 3rd November 2008 as proceedings before the First-tier Tribunal.
2. Subject to article 3(3)(b) any proceedings before a tribunal listed in Table 2 of Schedule 1 which are pending immediately before 3rd November 2008 shall continue on and after 3rd November 2008 as proceedings before the Upper Tribunal.
- 3.—(1) The following sub-paragraphs apply where proceedings are continued in the First-tier Tribunal or Upper Tribunal by virtue of paragraph 1 or 2.
 - (2) Where a hearing began before 3rd November 2008 but was not completed by that date, the First-tier Tribunal or the Upper Tribunal, as the case may be, must be comprised for the continuation of that hearing of the person or persons who began it.
 - (3) The First-tier Tribunal or Upper Tribunal, as the case may be, may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—
 - (a) apply any provision in procedural rules which applied to the proceedings before 3rd November 2008; or
 - (b) disapply provisions of Tribunal Procedure Rules.
 - (4) In sub-paragraph (3) “procedural rules” means provision (whether called rules or not) regulating practice or procedure before a tribunal.
 - (5) Any direction or order given or made in proceedings which is in force immediately before 3rd November 2008 remains in force on and after that date as if it were a direction or order of the First-tier Tribunal or Upper Tribunal, as the case may be.
 - (6) A time period which has started to run before 3rd November 2008 and which has not expired shall continue to apply.
 - (7) An order for costs may only be made if, and to the extent that, an order could have been made before 3rd November 2008.

Sch. 4

4. Subject to article 3(3)(a) and (b) where an appeal lies to a Child Support or Social Security Commissioner from any decision made before 3rd November 2008 by a tribunal listed in Table 1 of Schedule 1, section 11 of the 2007 Act (right to appeal to Upper Tribunal) shall apply as if the decision were a decision made on or after 3rd November 2008 by the First-tier Tribunal.

5. Subject to article 3(3)(b) where an appeal lies to a court from any decision made before 3rd November 2008 by a Child Support or Social Security Commissioner, section 13 of the 2007 Act (right to appeal to Court of Appeal etc.) shall apply as if the decision were a decision made on or after 3rd November 2008 by the Upper Tribunal.

6. Subject to article 3(3)(a) and (b) any case to be remitted by a court on or after 3rd November 2008 in relation to a tribunal listed in Schedule 1 shall be remitted to the First-tier Tribunal or Upper Tribunal as the case may be.

Savings provisions

7.—(1) Section 78(8) of the Mental Health Act 1983(**a**) shall continue to apply to any decision given by a Mental Health Review Tribunal before 3rd November 2008 as if the amendments to it in Schedule 3 had not been made.

(2) Section 11(1) of the Tribunals and Inquiries Act 1992(**b**) shall continue to apply to any decision given by the Special Educational Needs and Disability Tribunal or the Special Educational Needs Tribunal for Wales before 3rd November 2008 as if the amendments to it in Schedule 3 had not been made.

(3) Section 9(6) of the Protection of Children Act 1999(**c**) shall continue to apply to any decision given by the tribunal under section 9(1) of that Act before 3rd November 2008 as if the amendments to it in Schedule 3 had not been made.

(a) 1983 c. 20.

(b) 1992 c. 53; the relevant amendment is made by paragraphs 19 and 20(b) of Schedule 8 to the Special Educational Needs and Disability Act 2001 (c. 10).

(c) 1999 c. 14.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”). Part 1 of the 2007 Act creates a new two tier tribunal structure; the First-tier Tribunal and the Upper Tribunal (“the new tribunals”) are established under section 3 of the 2007 Act. Order making powers are provided under Part 1 of the 2007 Act to enable existing tribunals to be transferred into the new structure. This Order has various primary functions to effect the transfers, and in addition contains various minor, consequential and transitional provisions, as explained below.

Transfer of functions of tribunals

Article 3 transfers the functions of the tribunals listed in the tables in Schedule 1 to the new tribunals.

Appeals under the Health and Social Care (Community Health and Standards) Act 2003 are made to the appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 and onward appeals from that tribunal are to the Social Security Commissioners. The functions related to these appeal rights in respect of Scotland are not transferred as part of this Order. Therefore, the appeal tribunal and Social Security Commissioners are retained for the purposes of these appeals. The extent provisions in article 1(5) retain the relevant legislation for the purpose of these appeals.

In the case of Pensions Appeal Tribunals the transfer relates only to tribunals in England and Wales; Pensions Appeal Tribunals in Scotland and Northern Ireland retain their functions. In the case of Mental Health Review Tribunals the transfer relates only to tribunals in England; the Mental Health Review Tribunal for Wales retains its functions. In the special educational needs regime the functions of the Special Educational Needs and Disability Tribunal (which relates only to England) are transferred but the functions of the Special Educational Needs Tribunal for Wales are not.

Abolition of tribunals following transfer of functions

Article 4 abolishes the tribunals from which the functions are transferred under article 3 (with exceptions to provide for tribunals to remain in place to hear the Scottish appeals which are not transferred).

Transfer of members of tribunals

Article 5 provides for members of the tribunals from which the functions are transferred by article 3 to hold the offices of transferred-in judge or transferred-in other member of the First-tier Tribunal, or deputy judge or transferred-in judge of the Upper Tribunal. Those members becoming deputy judges of the Upper Tribunal also become transferred-in judges of the First-tier Tribunal. The tables in Schedule 2 set out which tribunal members hold which offices in the new tribunals.

Additions to Schedule 6 to the 2007 Act

Article 2 adds three tribunals to the table in Part 4 of Schedule 6 to the 2007 Act, bringing them within the scope of the Lord Chancellor’s power to transfer tribunal functions to the First-tier Tribunal or the Upper Tribunal. None of the three tribunals are transferred to the new tribunals in this Order.

Appeals to the Upper Tribunal from tribunals in Wales, Scotland and Northern Ireland

Article 6 provides for an onward appeal right to the Upper Tribunal from decisions of the Mental Health Review Tribunal for Wales and the Special Educational Needs Tribunal for Wales in place of the previous onward appeal right to the High Court.

The transfer of the Pensions Appeal Tribunal for England and Wales to the First-tier Tribunal creates an onward appeal right for decisions under section 5 of the Pensions Appeal Tribunals Act 1943. To ensure parity across the jurisdictions articles 7 and 8 provide for an onward appeal from the Pensions Appeal Tribunals for Scotland and Northern Ireland to the Upper Tribunal for decisions under section 5 of the 1943 Act.

Minor and consequential provisions

Article 9 brings Schedule 3 into effect. Schedule 3 contains minor and consequential amendments.

The amendments in Schedule 3 are amendments to primary legislation resulting from the transfer of tribunal functions and members, abolition of tribunals and new appeal rights provided for in this Order. To a great extent the amendments redirect the existing appeal rights by the replacement of references to the tribunals being abolished with references to the tribunals to which the functions are being transferred. The Order also deletes provisions relating to the abolished tribunals where the effects of those provisions are or will be provided for in the Tribunals, Courts and Enforcement Act 2007 or in Tribunal Procedure Rules made under that Act.

Amendments to the Mental Health Act 1983 ensure that that Act as amended refers to the First-tier Tribunal so far as proceedings relating to England are concerned, but to the Mental Health Review Tribunal for Wales (“MHRTfW”) so far as proceedings relating to Wales are concerned, and retains provisions relating to the constitution and procedure of the MHRTfW. That Act as amended also includes provision for the new appeal right from the MHRTfW to the Upper Tribunal.

Amendments to the Disability Discrimination Act 1995 and the Education Act 1996 ensure that those Acts as amended refer to the First-tier Tribunal so far as proceedings relating to England are concerned, but to the Special Educational Needs Tribunal for Wales (“SENTfW”) so far as proceedings relating to Wales are concerned, and retain provisions relating to the constitution and procedure of the SENTfW. Those Acts as amended also include provision for the new appeal right from the SENTfW to the Upper Tribunal.

Amendments to the War Pensions (Administrative Provisions) Act 1919 and the Pensions Appeal Tribunal Act 1943 ensure that those Acts as amended refer to the First-tier Tribunal so far as proceedings relating to England and Wales are concerned, but to the Pensions Appeal Tribunals so far as proceedings relating to Scotland and Northern Ireland are concerned. Onward appeals from decisions of the Pension Appeals Tribunals for Scotland are to the Upper Tribunal. Onward appeals from decisions of the Pensions Appeal Tribunal for Northern Ireland remain (apart from the new appeal right under section 5 of the 1943 Act) to the Social Security Commissioners for Northern Ireland.

Article 104(5)(d) inserts a minor amendment into paragraph 3 of Part 2 of Schedule 4 to the Social Security Administration Act 1992. This amendment is in consequence of the creation of the Administrative Justice and Tribunals Council and the abolition of the Council on Tribunals under sections 44 and 445 of the 2007 Act.

Transitional and saving provisions

Article 9(2) brings Schedule 4 into effect. Schedule 4 make transitional and saving provisions for the treatment of cases which would previously have been dealt with by the tribunals from which the functions are transferred by article 3, or onward appeals from those tribunals, following the coming into force of this Order.

The Schedule provides for proceedings which have been started in tribunals from which the functions are transferred by article 3 to be transferred to the new tribunals; new proceedings will be started in the new tribunals. In transferred cases the following provisions apply:

- a hearing which has already been commenced but not completed will need to be completed in the new tribunal but comprised of the same members;
- directions and orders made prior to this Order coming into force will continue in force as if they were directions or orders of the new tribunals;
- Tribunal Procedure Rules made under the Tribunals, Courts and Enforcement Act 2007 will apply to all cases from day one, but the new tribunals will be able to disapply Tribunal Procedure Rules, apply procedural rules which applied to the abolished tribunals or make other directions to ensure that proceedings are dealt with fairly;
- time limits which begin to run before this Order comes into force continue to apply after the Order comes into force; and
- the new tribunals will only be able to make a costs order if and to the extent that the tribunal from which the case was transferred could have made such an order.

Onward appeals against the decisions of tribunals from which the functions are transferred by article 3 are dealt with as follows:

- onward appeals against decisions given before 3rd November 2008 by a Mental Health Review Tribunal, the Special Educational Needs and Disability Tribunal, the Special Educational Needs Tribunal for Wales or the “Care Standards Tribunal” will continue to be made to the High Court, even if the onward appeal proceedings are not commenced until after that date. Onward appeals against decisions given on or after 3rd November 2008 must be made under the new regime;
- onward appeals against decisions given before 3rd November 2008 which would before that date have been heard by a Social Security Commissioner or Child Support Commissioner, but which are made after that date, must be made under the new regime; and
- onward appeals against decisions given by a Social Security Commissioner or Child Support Commissioner before 3rd November 2008, which are made after that date, must be made under the new regime.

A Regulatory Impact Assessment was prepared for the Tribunals, Courts and Enforcement Act 2007. This can be found at:

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

