Draft Order laid before Parliament under section 49(5) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. [xx]

TRIBUNALS AND INQUIRIES

The Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009

Made - - - - ***

Coming into force - - *1st September 2009*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(2) and (9) and 38 of, and paragraph 30 of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(**1**).

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

Citation, commencement and extent

1.—(1) This Order may be cited as the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009 and comes into force on 1st September 2009.

(2) The amendments made by paragraphs 6 and 7 of Schedule 1 do not extend to Scotland.

Transfer of functions of the Transport Tribunal and Appeal Panel

2.—(1) The functions of the Transport Tribunal under the Road Traffic Act 1988(**2**), the Road Traffic Offenders Act 1988(**3**), the Postal Services Act 2000(**4**), the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(**5**) and the European Communities (Recognition of Professional Qualifications) Regulations 2007(**6**) are transferred to the First-tier Tribunal.

(**1**) 2007 c. 15. The Appeal Panel referred to in section 189(6) of the Greater London Authority Act 1999 (c.29) was added to Part 4 of Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 (c.15) by the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009 (S.I. 2009/XXXX).
(**2**) 1988 c. 52.
(**3**) 1988 c. 53.
(**4**) 2000 c. 26.
(**5**) S.I. 2007/605.
(**6**) S.I. 2007/2781.

(2) The functions of the panel of persons appointed by the Lord Chancellor under section 189(6) of the Greater London Authority Act 1999(**7**) are transferred to the First-tier Tribunal.

(3) The functions of the Transport Tribunal under the Public Passenger Vehicles Act 1981(**8**), the Transport Act 1985(**9**), the Goods Vehicles (Licensing of Operators) Act 1995(**10**), section 155 of the Transport Act 2000(**11**), the Local Transport Act 2008(**12**), the Goods Vehicles (Community Authorisations) Regulations 1992(**13**), the Public Service Vehicles (Community Licences) Regulations 1999(**14**), the Road Transport (Passenger Vehicles Cabotage) Regulations 1999(**15**) and the Goods Vehicles (Enforcement Powers) Regulations 2001(**16**) are transferred to the Upper Tribunal.

Additional offices to be held by persons who are members of the Transport Tribunal

3. A person who, immediately before this Order comes into force, holds an office listed in column (1) of the following table is in addition to hold the office or offices listed in the corresponding entry in column (2) of that table.

(1) *Office held*	*(2)* *Office or offices to be held*
President of the Transport Tribunal appointed under paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985(**17**)	Transferred-in judge of the Upper Tribunal
Chairman of the Transport Tribunal appointed under paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985	Transferred-in judge of the Upper Tribunal
Other member of the Transport Tribunal appointed under paragraph 2(1)(b) of Schedule 4 to the Transport Act 1985	Transferred-in other member of the Upper Tribunal

Consequential and transitional provisions

4.—(1) Schedule 1 contains amendments to primary legislation as a consequence of the transfer effected by this Order.

(2) Schedule 2 contains amendments to secondary legislation as a consequence of the transfer effected by this Order.

(3) Schedule 3 contains repeals and revocations as a consequence of the amendments in Schedules 1 and 2.

(4) Schedule 4 contains transitional and saving provisions.

(**7**) 1999 c. 29.
(**8**) 1981 c. 14.
(**9**) 1985 c. 67.
(**10**) 1995 c. 23.
(**11**) 2000 c. 38.
(**12**) 2008 c. 26.
(**13**) S.I. 1992/3077.
(**14**) S.I. 1999/1322.
(**15**) S.I. 1999/3413.
(**16**) S.I. 2001/3981.
(**17**) 1985 c. 67.

By the authority of the Lord Chancellor

Parliamentary Under-Secretary of State
Date Ministry of Justice

SCHEDULE 1 Article 4(1)

Consequential provisions – primary legislation

Public Passenger Vehicles Act 1981

1. The Public Passenger Vehicles Act 1981(**18**) is amended as follows.

2. In section 50 (appeals to the Transport Tribunal)—

(a) in subsections (1) and (3) to (6), and in the heading, for "Transport Tribunal" substitute "Upper Tribunal"; and

(b) in subsection (8)—

(i) for "to the Transport Tribunal" substitute "to the Upper Tribunal"; and

(ii) omit "and the Transport Tribunal shall give their decision on the application within fourteen days".

3. In section 54(8)(c) (inquiries held by traffic commissioners) for "Transport Tribunal" substitute "Upper Tribunal".

4. In paragraph 12 of Schedule 2A (appeal to Transport Tribunal from traffic commissioner)—

(a) in sub-paragraph (1), and in the heading, for "Transport Tribunal" substitute "Upper Tribunal"; and

(b) omit sub-paragraph (2).

Transport Act 1985

5. The Transport Act 1985(**19**) is amended as follows.

6. In section 6A (applications for registration etc where restrictions are in force)—

(a) in subsection (9)—

(i) for "Transport Tribunal" substitute "Upper Tribunal"; and

(ii) omit "As respects appeals to the Transport Tribunal, see Schedule 4 to this Act."; and

(b) omit subsection (10).

7. In section 9 (appeals against traffic regulation conditions)—

(a) in subsection (1) for " the Transport Tribunal" substitute "the Upper Tribunal";

(b) omit subsection (5); and

(c) in subsection (6) for "The persons who may appeal against any such decision of the Transport Tribunal are" substitute "For the purposes of section 13(2) of the Tribunals, Courts and Enforcement Act 2007 (appeals to Court of Appeal etc. against decisions of the Upper Tribunal) the following persons are to be treated as parties to a case".

(**18**) 1981 c. 14. Sections 50 and 54 were substituted by sections 4 and 31 of the Transport Act 1985 (c. 67) and section 50 was amended by section 65(2) of the Deregulation and Contracting Out Act 1994 (c. 40). Schedule 2A was inserted by Schedule 3 to the Local Transport Act 2008 (c. 26).

(**19**) 1985 c. 67. Section 6A was inserted by section 48(3) of the Local Transport Act 2008 (c. 26). Section 9 is amended by section 51 of that Act. Schedule 4 is amended by paragraph 65 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41), paragraph 57 of Schedule 6 and Schedule 9 to the Judicial Pensions and Retirement Act 1993 (c. 8), paragraph 10 of Schedule 7 and Schedule 8 to the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23), paragraph 179 of Schedule 4 and paragraph 42(1) and (3) of Schedule 9 to the Constitutional Reform Act 2005 (c. 4), paragraph 17 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 76 of the Local Transport Act 2008 (c. 26), article 2 of the Transfer of Functions (Transport Tribunal) Order 1989 (S.I. 1989/495), the Schedule to the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), and regulation 10(5) of the Road Transport (Passenger Vehicles Cabotage) Regulations 1999 (S.I. 1999/3413).

8. In section 117(2) (reconstitution of the Transport Tribunal) at the end insert "; and that Schedule also makes provision in relation to appeals to the First-tier Tribunal or the Upper Tribunal under enactments relating to transport (see paragraphs 17 and 18)".

9. In Schedule 4 (constitution, powers and proceedings of the Transport Tribunal)—

(a) in paragraph 1 after "Tribunal" insert "(referred to in this Schedule as "the tribunal")";

(b) in paragraph 8(1) omit "Subject to paragraph 9(2) below,";

(c) omit paragraph 9; and

(d) after paragraph 16 insert—

"**Powers of First-tier Tribunal and Upper Tribunal in relation to transport appeals**

17.—(1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport.

In the case of the Upper Tribunal, this is subject to sub-paragraph (3).

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power—

(a) to make such order as it thinks fit; or

(b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

(4) A determination of a traffic commissioner is an excluded determination for the purposes of this paragraph if it is made under—

(a) the Goods Vehicles (Community Authorisations) Regulations 1992(**20**); or

(b) the Public Service Vehicles (Community Licences) Regulations 1999(**21**).

18. Paragraph 12 applies in relation to the First-tier Tribunal and the Upper Tribunal for the purpose of the exercise of any of their functions under an enactment relating to transport.".

Road Traffic Act 1988

10. The Road Traffic Act 1988(**22**) is amended as follows.

11. In section 131 (appeals)—

(**20**) S.I. 1992/3077.
(**21**) S.I. 1999/1322.
(**22**) 1988 c. 52. Section 131 was amended by section 258 and 259(4) of, and paragraph 12 of Schedule 29 to, the Transport Act 2000 (c. 38) and by paragraphs 1 and 13 of Schedule 6 and Schedule 7 to the Road Safety Act 2006 (c. 49) from a date to be appointed. Section 133ZA was inserted by paragraphs 1 and 14 of Schedule 6 to the Road Safety Act 2006 from a date to be appointed. Section 162A was inserted by section 43 of that Act.