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. 0000

TRIBUNALS AND INQUIRIES

The Transfer of Functions of the Charity Tribunal 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(1), (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 a resolution of each House of Parliament in accordance with section 49(5) of that Act.

Citation and commencement

1. This Order may be cited as the Transfer of Functions of the Charity Tribunal Order 2009 and comes into force on 1st September 2009.

Transfer of functions

2.—(1) The functions of the Charity Tribunal are transferred to the First-tier Tribunal and the Upper Tribunal, with the question as to which one of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules.

(2) The Charity Tribunal is abolished.

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

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

(**1**) 2007 c.15.

(1) Office held	*(2) Office to be held*
President of the Charity Tribunal appointed under paragraph 1(2)(a) of Schedule 1B to the Charities Act 1993(**2**)	Deputy judge of the Upper Tribunal and transferred-in judge of the First-tier Tribunal
A legal member of the Charity Tribunal appointed under paragraph 1(2)(b) of Schedule 1B to the Charities Act 1993	Transferred-in judge of the First-tier Tribunal
An ordinary member of the Charity Tribunal appointed under paragraph 1(2)(c) of Schedule 1B to the Charities Act 1993	Transferred-in other member of the First-tier 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 an amendment 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.

By authority of the Lord Chancellor

Parliamentary Under-Secretary of State,
Ministry of Justice

Date

(**2**) 1993 c. 10. Schedule 1B was inserted by Schedule 3 to the Charities Act 2006 (c.50).

SCHEDULE 1

Article 4(1)

Consequential amendments to primary legislation

House of Commons Disqualification Act 1975

1. In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975(**3**) (bodies of which all members are disqualified) omit the entry relating to the Charity Tribunal.

Northern Ireland Assembly Disqualification Act 1975

2. In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975(**4**) (bodies of which all members are disqualified) omit the entry relating to the Charity Tribunal.

Courts and Legal Services Act 1990

3. In Schedule 11 to the Courts and Legal Services Act 1990(**5**) (judges etc barred from legal practice) omit the entry relating to the President or other member of the Charity Tribunal.

Tribunals and Inquiries Act 1992

4. In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992(**6**) (tribunals under direct supervision of Council) omit the entry at paragraph 6A relating to charities.

Judicial Pensions and Retirement Act 1993

5. In Part 2 of Schedule 1 to the Judicial Pensions and Retirement Act 1993(**7**) (other appointments – members of Tribunals) omit the entry relating to the President of the Charity Tribunal.

Charities Act 1993

6. The Charities Act 1993(**8**) is amended as follows.

7. In the heading for Part 1A omit "Charity".

8. In section 2A (the Charity Tribunal)—

(a) in the heading omit "Charity";

(b) omit subsections (1) to (3); and

(c) in subsection (5) for "section 2B below and rules made under that section" substitute "rules made under section 2B(2) and Tribunal Procedure Rules".

9. In section 2B (practice and procedure)—

(**3**) 1975 c.24. The entry in Part 2 of Schedule 1 relating to the Charity Tribunal was inserted by paragraph 2 of Schedule 3 to the Charities Act 2006 (c.50).
(**4**) 1975 c.25. The entry in Part 2 of Schedule 1 relating to the Charity Tribunal was inserted by paragraph 3 of Schedule 3 to the Charities Act 2006 (c.50).
(**5**) 1990 c.41. The entry in Schedule 11 relating to the Charity Tribunal was inserted by paragraph 4 of Schedule 3 to the Charities Act 2006 (c.50).
(**6**) 1992 c.53. Paragraph 6A was inserted by paragraph 5 of Schedule 3 to the Charities Act 2006 (c.50).
(**7**) 1993 c.8. The entry relating to the President of the Charity Tribunal was inserted by article 2 of the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2007 (S.I. 2007/675).
(**8**) 1993 c.10. Sections 2A to 2D, and the definition of "the Tribunal" in section 97(1), were inserted by section 8(1) of, and paragraph 174 of Schedule 8 to, the Charities Act 2006 (c.50). Schedules 1B to 1D were inserted by Schedules 3 and 4 of the 2006 Act. Schedule 1B was amended by paragraph 23 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(a) for subsections (1) to (3) substitute—

"(1) This section applies in relation to appeals, applications or references to the Tribunal which are mentioned in section 2A(4).

(2) The Lord Chancellor may make rules—

(a) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any such steps must be taken);

(b) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission.

(3) Tribunal Procedure Rules may make any other provision regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it.";

(b) in subsection (4)—

(i) for "subsection (1)(a) or (b)" substitute "subsection (2) or (3)";

(ii) after paragraph (a) insert "or"; and

(iii) omit paragraph (b) and the following "or"; and

(c) omit subsections (5) to (7).

10. In section 2C (appeal from Tribunal)—

(a) omit subsections (1), (2) and (4);

(b) in subsection (3)—

(i) for "this section" substitute "section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007(**9**)"; and

(ii) for "High Court" substitute "tribunal or court hearing the appeal"; and

(c) in subsection (5)—

(i) for "subsection (1) above" substitute "sections 11(2) and 13(2) of the Tribunals, Courts and Enforcement Act 2007";

(ii) in paragraph (a) for "all proceedings before the Tribunal" substitute "cases before the Tribunal in respect of any such appeal, application or reference as is mentioned in section 2A(4)"; and

(iii) omit paragraph (b) (and the "and" immediately before it).

11. In section 2D (intervention by Attorney General)—

(a) in subsection (2) for the words from the beginning to "the court" substitute "The appropriate body";

(b) in subsections (3) and (4)(b) (in both places) for "Tribunal or court" substitute "appropriate body";

(c) in subsection (5) for "the Tribunal or court has given a direction" substitute "a direction is given"; and

(d) at the end insert—

"(6) In this section "the appropriate body" means the Tribunal or, in the case of an appeal from the Tribunal, the tribunal or court hearing the appeal.".

12. In section 97(1) (general interpretation), for the definition of "the Tribunal" substitute—

(**9**) 2007 c. 15.