*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. XXX

# TRIBUNALS AND INQUIRIES

## The Transfer of Functions of the Asylum and Immigration Tribunal Order 2009

| | |
|---|---|
| *Made - - - -* | *** |
| *Coming into force - -* | *15 February 2010* |

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(1), (2), (7) and (9) and 38 of the Tribunals, Courts and Enforcement Act 2007(**1**).

The Lord Chancellor has consulted the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Schedule 7 to that Act.

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 and commencement

**1.** This Order may be cited as the Transfer of Functions of the Asylum and Immigration Tribunal Order 2009 and comes into force on 15 February 2010.

### Transfer of functions and abolition of tribunal

**2.**—(1) The functions of the Asylum and Immigration Tribunal are transferred to the First-tier Tribunal.

(2) The Asylum and Immigration 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* |
|---|---|
| Deputy President of the Asylum and Immigration Tribunal appointed under paragraph 5(1)(b) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002(**2**) | Transferred-in judge of the Upper Tribunal |
| Legally qualified member of the Asylum and Immigration Tribunal appointed under paragraphs 1 and 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 and specified by the Lord Chancellor as a Senior Immigration Judge pursuant to the Asylum and Immigration Tribunal (Judicial Titles) Order 2005(**3**) | Transferred-in judge of the Upper Tribunal |
| Legally qualified member of the Asylum and Immigration Tribunal appointed under paragraphs 1 and 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 and specified by the Lord Chancellor as a Designated Immigration Judge pursuant to the Asylum and Immigration Tribunal (Judicial Titles) Order 2005 | Transferred-in deputy judge of the Upper Tribunal; transferred-in judge of the First-tier Tribunal |
| Legally qualified member of the Asylum and Immigration Tribunal appointed under paragraphs 1 and 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 | Transferred-in judge of the First-tier Tribunal |
| Other member of the Asylum and Immigration Tribunal appointed under paragraphs 1 and 2(1)(e) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 | Transferred-in other member of the Upper Tribunal |

**Transfer of Rules**

**4.** The Asylum and Immigration Tribunal (Procedure) Rules 2005(**4**) and the Asylum and Immigration Tribunal (Procedure) (Fast-track) Rules 2005(**5**) have effect as if they were Tribunal Procedure Rules.

**Consequential and transitional provisions**

**5.**—(1) Schedule 1 contains consequential amendments to primary legislation as a consequence of the transfers effected by this Order.

(2) Schedule 2 contains consequential amendments to secondary legislation as a consequence of the transfers 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.

(**2**) 2002 c.41.
(**3**) S.I. 2005/227.
(**4**) S.I. 2005/230.
(**5**) S.I. 2005/560.

By the authority of the Lord Chancellor

Parliamentary Under-Secretary of State,
Ministry of Justice

Date

SCHEDULE 1 Article 5(1)

Consequential provisions – primary legislation

**Immigration Act 1971**

**1.** Schedule 2 to the Immigration Act 1971(**6**) (administrative provisions as to control on entry etc.) is amended as follows.

**2.** In paragraphs 22(1A), (2), and (3), 23(1) and (2), 24(2)(a) and (3), 29(2), (3) and (6) and 33(3) for "the Asylum and Immigration Tribunal", in each place, substitute "the First-tier Tribunal".

**3.** For paragraph 25 substitute—

"**25.** Tribunal Procedure Rules may make provision with respect to applications to the First-tier Tribunal under paragraphs 22 to 24 and matters arising out of such applications.".

**House of Commons Disqualification Act 1975**

**4.** In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975(**7**) (bodies of which all members are disqualified) omit the entry relating to the Asylum and Immigration Tribunal.

**Northern Ireland Assembly Disqualification Act 1975**

**5.** In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975(**8**) (bodies of which all members are disqualified) omit the entry relating to the Asylum and Immigration Tribunal.

**Race Relations Act 1976**

**6.** In section 57A(5) of the Race Relations Act 1976(**9**) (claims under section 19B in immigration cases)—

(a) in the definition of "immigration appellate body"—

(i) for "the Asylum and Immigration Tribunal," substitute "the First-tier Tribunal,"; and

(ii) after "the Special Immigration Appeals Commission," insert "the Upper Tribunal,";

(b) in paragraph (b) of the definition of "relevant decision" for "or Part 5 of the 2002 Act" substitute ", Part 5 of the 2002 Act or section 11 or 13 of the 2007 Act";

(c) in the definition of "relevant immigration proceedings" for "or Part 5 of the 2002 Act" substitute ", Part 5 of the 2002 Act or section 11 or 13 of the 2007 Act"; and

(d) after the definition of "the 2002 Act" insert—

""the 2007 Act" means the Tribunals, Courts and Enforcement Act 2007;".

(**6**) 1971 c.77. Paragraph 22(1A) was inserted by paragraph 11 of Schedule 2 to the Asylum and Immigration Act 1996 (c.49) and paragraphs 22(1A), (2) and (3), 23(1) and (2), 24(2) and (3), 25, 29(2), (3) and (6) and 33(3) of Schedule 2 were amended by paragraph 1(2) to (4) and (6) of Part 1 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19).

(**7**) 1975 c.24. The entry in Part 2 of Schedule 1 relating to the Asylum and Immigration Tribunal was substituted by paragraph 2(2) of Part 1 of Schedule 2 to the 2004 Act.

(**8**) 1975 c.25. The entry in Part 2 of Schedule 1 relating to the Asylum and Immigration Tribunal was substituted by paragraph 3(2) of Part 1 of Schedule 2 to the 2004 Act.

(**9**) 1976 c.74. Section 57A was inserted by section 6(2) of the Race Relations (Amendment) Act 2000 (c.34) and subsection (5) was amended by paragraph 12(c), (f) and (g) of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c.41) and paragraph 12 of Schedule 1 to the Immigration, Asylum and Nationality Act 2006 (c.13).

### British Nationality Act 1981

**7.** In section 40A of the British Nationality Act 1981(**10**) (deprivation of citizenship: appeal)—

(a) in subsection (1) for "the Asylum and Immigration Tribunal" substitute "the First-tier Tribunal"; and

(b) omit subsection (3)(b).

### Courts and Legal Services Act 1990

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

### Tribunals and Inquiries Act 1992

**9.** In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992(**12**) (tribunals under direct supervision of Council) omit the entry at paragraph 22 relating to immigration and asylum.

### Judicial Pensions and Retirement Act 1993

**10.** The Judicial Pensions and Retirement Act 1993(**13**) is amended as follows.

**11.** Omit section 26(12A)(g) (retirement date for holders of certain judicial offices etc).

**12.** In Part 2 of Schedule 1 (other offices whose holders are appointed by the Lord Chancellor) omit the entry relating to the President or other member of the Asylum and Immigration Tribunal.

**13.** In Schedule 5 (retirement provisions: the relevant offices) omit the entry relating to the President or other member of the Asylum and Immigration Tribunal.

### Special Immigration Appeals Commission Act 1997

**14.** The Special Immigration Appeals Commission Act 1997(**14**) is amended as follows.

**15.** In section 5(2A) (procedure in relation to jurisdiction under sections 2 and 3) for the words from "rules under section 106" to the end substitute "Tribunal Procedure Rules".

**16.** In paragraph 5(b) of Schedule 1 (proceedings) for "a legally qualified member of the Asylum and Immigration Tribunal" substitute "a judge of the First-tier Tribunal, or of the Upper Tribunal, who is assigned to a chamber with responsibility for immigration and asylum matters".

**17.** In paragraphs 1(3)(a) and (b) and (4)(a) and (b) and 2(2)(a) and (b) and (3)(a) and (b) of Schedule 3 (bail: modifications of Schedule 2 to the Immigration Act 1971) for "the Asylum and Immigration Tribunal" substitute "the First-tier Tribunal".

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(**10**) 1981 c.61. Section 40A was substituted by section 4 of the 2002 Act. Section 40A(1) was amended, and section 40A(3) substituted, by paragraphs 4(a) and (b) of Part 1 of Schedule 2 to the 2004 Act.

(**11**) 1990 c.41. The entry in Schedule 11 relating to the Asylum and Immigration Tribunal was substituted by paragraph 6 of Part 1 of Schedule 2 to the 2004 Act.

(**12**) 1992 c.53. The entry in Part 1 of Schedule 1 relating to immigration and asylum was substituted by paragraph 7(3) of Part 1 of Schedule 2 to the 2004 Act.

(**13**) 1993 c.8. Section 26(12A) was inserted by section 54(3) of the Tribunals, Courts and Enforcement Act 2007 (c.15). The entries relating to the President or other member of the Asylum and Immigration Tribunal in Schedule 1 and Schedule 5 were substituted by paragraph 8 of Part 1 of Schedule 2 to the 2004 Act.

(**14**) 1997 c.68. Section 5(2A) was inserted by paragraph 23(b) of Schedule 7 to the 2002 Act. Paragraph 5(b) of Schedule 1 was substituted, and paragraphs 1 and 2 of Schedule 3 amended, by paragraphs 2(1) and 13(3) to (9) of Part 1 of Schedule 2 to the 2004 Act.