

**EXPLANATORY MEMORANDUM TO  
THE CONTRACTING OUT (ADMINISTRATIVE WORK OF TRIBUNALS) ORDER  
2009**

**2009 No. 121**

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 This instrument is made under subsection 40(4) of the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) to enable the Lord Chancellor to enter into contracts for the provision of administrative staff to the First-tier Tribunal, the Upper Tribunal, employment tribunals, the Employment Appeal Tribunal and the Asylum and Immigration Tribunal. This instrument also amends The Contracting Out of Functions (Tribunal Staff) Order 2001 (“the 2001 Order”) to remove references to the defunct Immigration Appeal Tribunal.

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

3.1 None

**4. Legislative Context**

4.1 The 2007 Act received Royal Assent in July 2007. Chapter 4 of Part 1 of the 2007 Act deals with administrative matters in respect of certain tribunals. Section 39 provides that the Lord Chancellor is under a general duty to ensure that there is an efficient and effective system to support the carrying on of the business of:

- (a) the First-tier Tribunal,
- (b) the Upper Tribunal,
- (c) employment tribunals,
- (d) the Employment Appeal Tribunal, and
- (e) the Asylum and Immigration Tribunal

and that appropriate services are provided for those tribunals.

4.2 Section 40 of the 2007 Act provides that the Lord Chancellor may appoint staff as appear to him appropriate for the purpose of discharging the general duty described in subsection 39(1). Under subsection 40(2) the Lord Chancellor may enter into such contracts with other persons for the provision, by them or their sub-contractors, of staff or services as appear to him appropriate for the purpose of discharging his general duty. However this power to ‘contract out’ tribunal support and other services is subject to restrictions contained in subsections 40(3) and 40(4). Subsection 40(4) provides that the Lord Chancellor may not enter into contracts for the provision of staff to carry out the administrative work of the tribunals listed in subsection 39(1) unless the Lord Chancellor has made an order authorising him to do so.

4.3 This instrument is made pursuant to subsection 40(4) and the Lord Chancellor's power under section 145 of the 2007 Act to make supplementary or other provisions to give effect to the provisions of that Act.

4.4 Subsection 40(5) requires consultation with the Senior President of Tribunals as to what effect (if any) the order might have on the proper and efficient administration of justice.

4.5 The 2001 Order was made pursuant to section 69 of the Deregulation and Contracting Out Act 1994. It permits the Lord Chancellor to contract out of his function of appointing officers and other staff for the Lands Tribunal and for the Immigration Appellate Authority.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom

## **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**

### **• *What is being done and why***

7.1 The First-tier Tribunal and Upper Tribunal were established on 3 November 2008 with the commencement of a package of statutory instruments facilitating the transfer of various tribunals into the unified tribunal system. The tribunals transferred on 3 November 2008 were:

- Care Standards Tribunal
- Mental Health Review Tribunal
- Special Educational Needs and Disability Tribunal
- Asylum Support Tribunal
- Criminal Injuries Compensation Appeals Panel
- Social Security and Child Support Appeals, and
- Pensions Appeal Tribunal England and Wales.

7.2 The Tribunals Service, an executive agency of the Ministry of Justice, provided administrative support to each of these tribunals before their transfer into the unified tribunal system. The Tribunal Service now has responsibility for the administration of the First-tier Tribunal and Upper Tribunal.

7.3 This instrument has been made to ensure the Tribunals Service/Lord Chancellor has the ability to engage contract staff where necessary and appropriate thereby maintaining continuity in the administrative support for transferred jurisdictions and discharging the Lord Chancellor's general duty to ensure an efficient and effective system of support for the tribunals covered by the instrument. This instrument will also cover all tribunals transferred into the unified tribunal system in the future.

Amendments to 2001 Order

7.5 The amendments to the 2001 Order simply remove redundant references to the Immigration Appeals Tribunal, which no longer exists.

- **Consolidation**

7.2 No consolidation is necessary; the instrument simply removes the references to the Immigration Appeal Tribunal from the 2001 Order as the Tribunal is now abolished.

## **8. Consultation outcome**

8.1 As required under subsection 40(5) the Lord Chancellor has consulted with the Senior President of Tribunals regarding the making of this instrument. The Senior President was content with the draft instrument and did not raise any issues regarding its effect (if any) on the proper and efficient administration of justice.

8.2 The Public and Commercial Services Union was advised of the proposal to make this instrument and did not raise any concerns.

## **9. Guidance**

9.1 Not applicable. The purpose of the Order is simply to maintain what is currently the case by allowing the Tribunals Service to engage employment agencies in order to provide administrative staff on a flexible and temporary basis when and where necessary. The Order does not extend the range of contracts the Lord Chancellor may enter into.

## **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.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The SI amends the 2001 Order to remove references to the Immigration Appeal Tribunal which no longer exists. We anticipate that the rest of that order will be revoked when the Lands Tribunal transfers into the Upper Tribunal later this year.

## **13. Contact**

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