

Second Implementation Review  
30.10.08 - As published

**SENIOR PRESIDENT OF TRIBUNALS**  
**SECOND IMPLEMENTATION REVIEW**  
**OCTOBER 2008**

## INTRODUCTION

1. In June 2008 I published my First Implementation Review (“the First Review”)<sup>1</sup>, dealing with the implementation of the tribunals provisions of the Tribunals, Courts and Enforcement Act 2007 (“TCEA”). At that time the target date for the first phase of implementation was 3 November 2008 (“T1-day”), which I described as a very significant milestone in the reform of justice in the United Kingdom. That paper described the main features of the new system, including the role and powers of the Senior President, the proposed arrangements for judicial leadership and governance arrangements, and relationships with the court judiciary and other important organisations. I proposed to issue a further review paper in the Autumn, including further detail on the workings of the Upper Tribunal. This review supplements the First Review, to which reference should continue to be made.
2. Since then there has been a period of intensive work in preparing the detailed subordinate legislation required to make the new system operational, as well as new procedural rules, practice directions and the essential administrative machinery and documentation. It had been hoped that the subordinate legislation would have passed through the parliamentary processes by the summer recess. That proved impossible, principally because of the need for further discussions on the future of the Pensions Appeal Tribunal. In the event it was only on 23 October that the orders received final approval of Parliament. Happily, the work already done has meant that it has not been necessary to delay T1-day.
3. To reach this point has required great efforts and commitment on the part of many judges and members, and of a small group of dedicated, hard-working and highly skilled Tribunal Service officials and Ministry of Justice lawyers. I am very grateful for all their work. The project has, I believe, been a model of what can be achieved by judges and administrators working in partnership. We have also been fortunate to have the consistent support of the Secretary of State and other ministers in the Ministry of Justice.

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<sup>1</sup> Available on the Tribunals Service web-site at  
<http://www.tribunals.gov.uk/Documents/SPIImplementationClean7b.pdf>

## **THE NEW TRIBUNAL SYSTEM - PHASE 1**

### ***Components of the first phase***

4. **Annex 1** contains a list of the statutory instruments which are now in place under the TCEA with a brief description of their purpose and effect
5. Accordingly, as anticipated in the first review, the new system will come into being on 3 November 2008. On that day I will acquire the statutory functions of Senior President of Tribunals (described in Annex B of the First Review). The First-tier and Upper Tribunals will be established. The First-tier will have three chambers: Health, Education and Social Care; Social Entitlement; and War Pensions and Armed Forces Compensation.
6. This is a slightly different configuration from that which was anticipated in the June review, in that the jurisdiction of the Pensions Appeal Tribunal will now be transferred to a separate chamber, rather than forming part of the Social Entitlement Chamber. The decision to create a separate chamber for this jurisdiction was made comparatively recently. The background to this decision is explained in a joint statement by the Lord Chancellor and the Senior President me, issued on the 16<sup>th</sup> October 2008 (see **Annex 2**).
7. The Upper Tribunal will have one chamber at this stage: Administrative Appeals.
8. The Employment Tribunals (England and Wales, and Scotland) and the Employment Appeals Tribunals, and the Asylum and Immigration Tribunal, will also become separate “pillars” of the new system, under my general leadership, but otherwise operating as before.

### ***Administrative Appeals Chamber***

9. In my First Review I promised to provide further information about the working of the new Administrative Appeal Chamber of the Upper Tribunal, which will come into operation on 3rd November 2008. **Annex 3** is a description of the proposed working arrangements prepared by Judge Hickinbottom.

***The New Tribunals Judiciary***

10. The First Review described my proposals for judicial leadership and governance (para 7-31). Those proposals remain effective.
11. Continuity of service and a seamless transfer of people and jurisdictions to the new structure have been essential components of planning the new structure. It is the intended effect of the transfer orders that almost all tribunal judges and members will be doing much the same work in much the same way after T-Day as they did before. Nevertheless this is a profound constitutional change, completing the process of embedding the tribunals judiciary in the judicial system.

*Judicial titles and oaths*

12. The Act marks that change for individuals in two important symbolic ways: first, by establishing judicial titles for the legal members of tribunals, and, secondly, by providing that all judges and members are to take the judicial oaths. I described the principles to be applied to judicial titles in the first review (paras 36-39). They remain effective.
13. It is not necessary for judges or members to take judicial oaths before beginning service under the new system. So this requirement will not cause any break in continuity. However, it is desirable that we complete the task as soon as reasonably possible. Unfortunately, it will not be practicable for me to administer oaths personally for all tribunal judges and members. The Act allows me to delegate this function. I intend to start the process of administering the oaths on T-day, for members of the Upper Tribunal, and some senior judges, in my court in Field House, London. There will be similar events in Cardiff and Edinburgh. Arrangements are currently being finalised for other judges and members to take their oaths at training events or other convenient times and places throughout the UK over the coming months. Details of the arrangements will be circulated as soon as possible.

***The Senior President and the court judiciary***

14. The First Review explained the role and functions of the Senior President (paras 7-10). I noted that the office of Senior President is free-standing, not subject to the authority of either the Lord Chancellor or the chief justices in any of the three jurisdictions. However, I referred to the provisions for co-operation with the chief justices on training, welfare and guidance. I indicated my intention to take my lead from the chief justices on matters of common interest, so far as consistent with my statutory responsibilities. Effective working arrangements have been established for co-operation with the court judiciary and administrators on many matters of common interest (see First Review paras 46-8). I intend to build on these arrangements in consultation with the chief justices and the senior court judges.
  
15. Since the First Review a new Lord Chief Justice for England and Wales, Lord Judge, has taken office. My early discussions with him confirm that he shares his predecessor's view of the tribunal judges as important part of the judicial family. I shall be working with him to strengthen and develop the links, which already exist. At the same time, Lord Justice May has been appointed as the new President of the Queen's Bench Division. He is expected to take a more active role in the supervision of the Administrative Court, and hence in developing the relationship between that court and the Upper Tribunal.

***Deputy Senior President of Tribunals***

16. Much of the hard work developing the statutory framework for T1-Day has fallen to the Deputy Senior President, Judge Gary Hickinbottom. I was delighted, when it was announced in September that he will become a High Court judge as from January 2009. He has the congratulations and good wishes of all in the tribunal world.
  
17. Judge Hickinbottom has led the judicial input in the formation of the Administrative Appeals Chamber of the Upper Tribunal, and I have asked him to become Acting Chamber President from T1 Day. I have agreed with the Lord Chief Justice and the Lord Chancellor, that when his appointment as a High Court judge takes effect in January he will become the first appointed Chamber President of the Administrative Appeals Chamber. He will continue that role at least until Easter 2009. I have agreed in principle with the President of the

Queen's Bench Division that the Chamber should continue thereafter to be led by High Court judge with Administrative Court experience.

18. Judge Hickinbottom will also continue in the role of the Deputy Senior President. That is a non-statutory role, which has proved crucial in the development of the new structure, particularly in working with the Tribunals Service's senior managers and in leading various judicial working groups. I will be reviewing the future scope of that role, in conjunction with the chamber presidents at the beginning of 2009.

### ***Chamber Presidents***

#### *SEC and HESCC*

19. The Chamber Presidents for the Social Entitlement and Health, Education and Social Care, and chambers have now been appointed by the Lord Chancellor, following a JAC selection exercise. Judge Phillip Sycamore, formerly the liaison judge for the Mental Health Review Tribunals in England, has been appointed as president of the Health, Education and Social Care chamber. Judge Robert Martin, president of the Social Security and Child Support Tribunals, has been appointed as president of the Social Entitlement chamber. Both bring a wealth of experience and knowledge to the posts, and I look forward to continued working with them. I also express my gratitude to Judge David Pearl, President of the Care Standards Tribunal, for acting as the representative judge for the HESC jurisdictions prior to the appointment of Chamber President.

#### *War Pensions and Armed Forces*

20. As already noted, the new chamber in the First-tier tribunal created on 3 November will be known as the War Pensions and Armed Forces compensation chamber. As a result of the timing of this decision it has not been possible to run a competition for the president of this chamber. There will be a JAC competition starting as soon as practicable to select a Chamber President. It is hoped that the appointment can be made by the late Spring. In the meantime I am grateful to Dr Harcourt Concannon, the current president of the PAT, for agreeing to become

Acting Chamber President, supported as now by Clare Horrocks, as non-statutory Deputy President.

***Procedural rules***

21. As explained in my First Review (para 64-6), I attached great importance to the overhaul of the procedural rules for the new system.
22. The rules are, under the TCEA, the responsibility of the Tribunal Procedure Committee, although they must be approved by the Lord Chancellor. Led by Mr Justice Elias, the President of the Employment Appeal Tribunal, the committee has produced, consulted upon and approved rules for each of the new chambers. They seem to me clear and succinct and a great improvement on the variety of different models under which tribunals have been working. They have met with general approval from stakeholders.
23. The rules are supplemented by practice directions and statements, which have been drawn up following consultation with judicial leaders in all the relevant tribunals. I am grateful to Judge Martin for proposing a general “typology” for deciding on the division between the different categories (attached as **Annex 4**) of contents and to my Legal Secretary, Clare Radcliffe, for drafting a proposed process for new or amended directions and statements (attached as **Annex 5**) for further discussion. Both the rules and the practice directions and statements, with supporting guidance, have been prepared so as to be ready for implementation on 3 November, and they were sufficiently developed for training of judges and members to take place, coupled with outreach exercises for key representatives.
24. This is a remarkable achievement. I pay tribute to the work of the Committee, and of the small team of lawyers and administrators from the Ministry of Justice Legal group and the Tribunals Service who support the committee. I am also very grateful to the judicial leaders who have supported this process and ensured that the requirements of the individual jurisdictions are taken fully into account.

## **PHASE 2 CHAMBERS**

### ***Timetable***

25. In my first review I anticipated that there would be only two phases in implementation, one in November 2008 and the other in April 2009. Since then the proposed inclusion of the Asylum and Immigration Tribunal is now more likely than not (see paragraph 39-40). If this goes ahead it will add greatly to the implementation work. As planning for the other the work has continued it has become apparent that a concentrated programme would be very difficult without serious risk of disruption, and that it would be prudent to plan for implementation of phase 2 to be spread over a longer timescale. This follows a reassessment of the scale and complexity of the work involved, in the light of experience on phase 1, particularly in respect of preparation of the necessary orders and rules, and adaptation of IT systems.
26. The current provisional timetable for the next phase is set out in **Annex 6**. This may be subject to further modifications as the work proceeds.

### ***Upper Tribunal chambers***

27. For the Upper Tribunal, the proposal in *Transforming Tribunals* and my first review was that there should be two chambers additional to the Administrative Appeals chamber: one dealing with Finance and Tax, and the other with Land and Property. I have considered this further in discussion with the Chancellor, Sir Andrew Morritt, and the jurisdictional leaders, and have proposed a modification. I have written to the Lord Chancellor for his agreement in principle, with a view to consulting relevant stakeholders. There are two main purposes to the change: first to bring the Lands Tribunal's work within the new system as soon as possible as a distinct entity; secondly, to preserve the links which currently exist at appellate level between certain non-tax tribunals and the Chancery Division of the High Court.
28. First, the Lands Tribunal would be brought into the Upper Tribunal in April 2009, as the "Lands Chamber", which as such would simply take over the current jurisdictions of the Lands Tribunal. The intention would be to enable it to continue



its current work with minimal change, while having access to a much wider pool of judges from the courts and the Upper Tribunal. This change is urgently needed since there is currently no means of deploying judges to sit in the Tribunal, other than through a JAC competition. The tribunal has in recent years relied on the use of circuit judges with suitable experience from the court system, deployed by agreement with Presiding Judges, as required to help deal with a fluctuating case-load. Since the setting up of the JAC this has not been possible.

29. Secondly, the proposed Finance and Tax Chamber would be expanded to cover other tribunal appeals which, like tax appeals, are currently allocated to the Chancery Division. These are appeals from the Charities Tribunal and the Land Registry Adjudicator. The chamber will also deal with appeals currently heard by the Pensions Regulator Tribunal and the Financial Services and Markets Tribunal. This chamber would be presided over by a Chancery High Court judge, nominated by the Lord Chief Justice on the recommendation of the Chancellor. The main purpose is to provide better continuity, and provide users with confidence that the relevant expertise would be available at appellate level for these specialised categories of work. The initial thinking is that the new chamber would be called the "Chancery Appeals Chamber" but I will be interested to hear views and the Ministry of Justice will be consulting more widely on this.
30. In accordance with the timetable already discussed, these changes, if agreed, would not affect the timing of the establishment of the Upper Tribunal Chamber for tax and duties appeals, which will take effect in April 2009. The chamber would be expanded thereafter to cover appeals from the other jurisdictions when they come into the system. Further into the future, the Agricultural Lands Tribunal and the Residential Property Tribunal Service may join the new structure and there would have to be consideration and consultation then as to which chamber of the Upper Tribunal should deal with appeals from them.
31. The Chancellor has nominated a Chancery Division judge, Mr Justice Warren, to act as Liaison Judge in the planning of the new arrangements, and in due course to become the first President of the new Chamber.

***First-tier***

*Tax and Duties*

32. At present the intention is that the only jurisdictions which will certainly be brought into the new framework in April 2009 will be the tax tribunals: that is, the existing jurisdictions of the General and Special Commissioners of Income Tax, the VAT and Duties Tribunal and the Section 709 Tribunal. It is essential that this date is met, because the reforms to the tax appeals system are inextricably linked with reforms which Her Majesty's Revenue and Customs are making to their own working arrangements. Tax appeal modernisation is long overdue and is a more fundamental change than those affecting other jurisdictions. For this reason, it has been a separate project within the Transforming Tribunals Programme. It is, I am assured, on course for successful implementation in April 2009.
33. Preparation has included not only JAC competitions for new legal and non-legal members, but also internal recruitment through an "expressions of interest" exercise among members of other tribunals, with a view to "assignment" into the new chamber when created. This will be the first opportunity to use the assignment provisions of the TCEA, and will be a useful test of the flexibility available in the unified system.
34. Tax and Duties will constitute a separate chamber in the First-tier Tribunal. Sir Stephen Oliver QC, Presiding Special Commissioner, has been leading the judicial contribution to the planning of the new chamber, and has agreed at my request to become first Acting Chamber President.

*General Regulatory*

35. The timetable for the commencement of the General Regulatory Chamber of the First-tier Tribunal has had to be revised. The present timetable, which is subject to further discussions, envisages implementation in two stages, in October 2009 and January 2010. I am advised that this delay will not generally pose practical difficulties or impact adversely on the service to users. However, I shall wish to review this with the individual jurisdictional leaders.
36. The work of this chamber is likely to expand with the implementation of the Regulatory Enforcement and Sanctions Act 2008. At present it is unclear what the

impact will be, because it depends upon decisions yet to be made by regulators as to whether they wish to join the new regulatory regime created by the Act, and if so when.

37. I am grateful to John Angel, President of the Information Tribunal, for the work he has already done at my invitation in representing the interests covered by the General Regulatory Chamber on the TJEB, and in leading discussions with the project team in the Tribunals Service. He has recently held a preliminary meeting of the jurisdictional leaders and administrators to discuss the working programme. It is intended shortly to launch a JAC competition for the new Chamber President, again with a view to an appointment in the late Spring. This will enable the new President to be directly involved in the preparations for launch and development of the new chamber.

#### *Lands*

38. The third group of jurisdictions planned for phase 2 were those dealing with lands and property. Only two of these jurisdictions, the Lands Tribunal and the Adjudicator to the Her Majesty's Land Registry, are currently administered by the Tribunals Service. Of these the Lands Tribunal has the more urgent need to be brought within the system (as already explained). It is proposed therefore that the Lands Tribunal jurisdictions will become a new chamber of the Upper Tribunal from April 2009. As the new chamber's jurisdictions and role, will be indistinguishable from those of the Lands Tribunal procedural and IT changes should be minimal. George Bartlett QC, President of the Lands Tribunal, has been leading the judicial contribution to the preparation for this chamber, and will continue as Acting Chamber President, pending a permanent appointment. That requires a JAC competition, which will be launched shortly, again with a view to appointment in late Spring.

#### *Asylum and Immigration*

39. A further, and very significant, development is the possibility that the jurisdictions of the Asylum and Immigration Tribunal will be transferred into the new structure. This follows the recommendations of a working group, jointly chaired by Lord Justice Richards and Lin Homer, the Chief Executive of the UK Border Agency.

The government published a consultation paper entitled “Immigration Appeals Fair Decisions; Faster Justice” asking for responses by 31 October 2008.

40. Subject to seeing the responses to consultation, I welcome this proposal as a logical development of the TCEA framework, and a practical response to some of the problems encountered in the present regime, notably in its relations with the High Court and Court of Appeal. The proposals, if adopted in principle, will require substantial work in refining the detail and planning implementation. The present timetable envisages implementation, at least in part, by the summer of 2009. Asylum and immigration work will certainly need a separate chamber in the First-tier tribunal. The JAC is being invited to plan for the appointment of a chamber president in due course. Whether there should be a separate chamber in the Upper Tribunal remains to be decided. In any event, I understand it to be agreed that there should be at least one High Court judge available to lead the asylum and immigration work in the Upper Tribunal, in addition to the President of the AAC.

#### ***Deputy Chamber Presidents***

41. Although the TCEA provides for the appointment of Deputy Chamber Presidents, none have yet been appointed or proposed. As I indicated in my First Review (para 27), I wanted to take time to consider with the Chamber Presidents what further statutory posts (if any) might be required, or whether it would be better to continue with non-statutory leadership posts, using delegated powers. That remains my general position.
42. There is a pressing need to address the jurisdictional leaderships within the Health, Education and Social Care Chamber following the retirement of Lady Hughes as President of SENDIST. I acknowledge her distinguished role in leading the Tribunal and helping to prepare it for the new system. I have been very grateful to the interim leadership provided by four senior judges of that jurisdiction during the last few months<sup>2</sup>. This has been particularly important in preparing the jurisdiction for the changes on T1-day. I am conscious of the heavy extra burden

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<sup>2</sup> Simon Oliver, Charlotte Beatson, Liz Goldthorpe and Richard White

imposed on them. However, I agree with them that this arrangement is not desirable or appropriate in the longer term.

43. I have discussed with Judge Sycamore, as Chamber President, how to proceed. Our provisional view, subject to agreement with the Lord Chancellor, is that there should in the future be two Deputy Chamber Presidents for the Chamber, one to deal with the mental health jurisdiction and the other to deal jointly with the jurisdictions of SENDIST and the Care Standards Tribunal. These appointments if agreed will require a JAC competition, for which the JAC will be asked to make arrangements as soon as possible.

## **REVIEW UPDATE**

44. I have some comments on other matters covered in the First Review

### ***Judicial Governance***

#### ***TJEB***

45. The arrangements for judicial governance explained in the First Review (paras 11-21) have proved effective and will continue, although subject to reconsideration as the new system develops. The central body for decision-making will remain the Tribunals Judiciary Executive Board (TJEB). As chambers are created, the Chamber Presidents will join TJEB, replacing the previous chamber leads. The Presidents of the Employment Tribunals in England and Wales, and in Scotland, and of the Employment Appeal Tribunal, and the AIT (as long as it remains outside the unified structure) will also continue as members. I will continue to invite senior officials of the Tribunals service to attend.
46. I am very grateful for the work already performed by the various TJEB judicial working groups described in the First review (para 18-21). Each has developed its own programme of work. I note in particular that the Training Group has presented for my approval a unified training programme for 2009-10. The Appraisal and Welfare group is due to report shortly on a proposal for a comprehensive system of appraisal for all judges and members.

**TPG**

47. I propose that the role of the Tribunal Presidents' Group (TPG) should be reconsidered. This has played a key role in keeping all jurisdictions, including some devolved jurisdictions, involved in the reform process. However, as individual tribunals become parts of statutory chambers, each of which will have its own judicial leadership structure, I regard it as important that the principal lines of responsibility and consultation should be through the chambers and their presidents, reporting to the TJEB.
48. I intend to seek further views on how this consultative role can best be developed in the future. The development of a comprehensive communications policy (including an improved web-site, and the Judicial Portal) should provide an efficient means of information and consultation on most issues. I would like to consider to replacing the TPG meetings with an annual or biannual conference for judicial leaders and representatives at all levels, which might help all concerned to focus on strategic issues for the tribunals and building new relationships.
49. This would also be an opportunity to involve the various associations representing tribunal judges and members, currently represented by the Forum of Tribunal Organisations, for whose work I remain very grateful (see First Review para 20).

***Tribunals Service***

50. As I explained in the First Review (para 41-2), I agreed with Peter Handcock that the relationship between the Senior President and the Chief Executive of the Tribunals Service should be one of partnership within a single organisation, in which my interests are represented by the Tribunals Judicial Office. I am very grateful to the members of my own office, led by Paul Stockton, for their unfailing support during a very challenging period.
51. Since the promotion of Peter Handcock, I and my judicial colleagues have continued to have a productive partnership with the Tribunals Service. We have met regularly with the acting Chief Executive, Jeanne Spinks, to whom I express my gratitude and good wishes for the future. We look forward to a similar close

working relationship with the new Chief Executive, Kevin Sadler, who will take up his post in January 2009.

52. It is important, however, to be keep in mind our distinct statutory roles. Tribunal judges and members are part of the independent judicial family, and I as Senior President am responsible for their leadership and for representing their views to Ministers and Parliament. The Lord Chancellor, through the Tribunals Service, has a statutory duty to provide “an efficient and effective system” to support the business of the tribunals (TCEA s 39).
53. The judiciary continue to be represented on all the important programme and project boards in the Tribunals Service, supplemented by a wide range of informal contacts. These dialogues, vital and productive as they are, absorb a significant amount of judicial time and as our new structure takes shape we will need to look to rationalise them. I am concerned that leadership roles and working with the Tribunals Service do not stand in the way of senior tribunal judges spending at least a proportion of their time working as judges. I regard that as important in maintaining their authority with their colleagues in the tribunals and the courts, and in making best use of their talents.

#### **The Access to Justice Group and MoJ financial pressures**

54. As explained in the First Review (para 45), the Tribunals Service is now part of the Access to Justice Group within the Ministry of Justice. The role of that Group is still evolving, as are its working relationships with the Tribunals Service and HMCS. The Group, like the rest of the Ministry of Justice, will face considerable financial challenges over the next few years. I will be working with the TJEB to ensure that our interests and the service to our users are protected.
55. I acknowledge the need for the tribunals judiciary to play its part in working to a more efficient and economical system, where this can be done without prejudicing service. I intend to take a particular interest in encouraging innovations which provide a better system at a lower cost. For example, pilots of alternatives to proceeding directly to conventional hearings are under way in the employment tribunals and the social security tribunals. If evaluation proves their worth I hope they can be replicated quickly in other jurisdictions.

56. There may be differences of view with the administration on what is required or what is acceptable. If so, I expect that the consultative and collaborative machinery we have with the Tribunals Service will help us to work to a better joint understanding and if possible a consensus as to what should be done. However, any response to financial pressure must not be allowed to detract from the constitutional duty of the Lord Chancellor to ensure that there is an efficient and effective system to support the tribunal system and to enable me as Senior President and other tribunal judges to carry out our duties in promoting tribunal justice under the Act.

### ***Judicial Studies Board***

57. We continue to work closely with the Judicial Studies Board, within the parameters set out in my first review. One initiative we have taken together is to design and run two introductory days training in October 2008, one for all the judges and legal officers in the Upper Tribunal on how it is to work, the other generic judicial leadership training for senior judges together with the Tribunals Service's senior managers. I am grateful to Mark Hinchliffe in particular for his work in organising these events, which provide a valuable basis for further collaboration in the future.

### ***Judicial Appointments Commission***

58. We also continue to work closely with the Judicial Appointments Commission. My office, supported by their colleagues in the operational parts of the tribunals service and supervised by the Appointments and Assignment Group, have produced a comprehensive programme of appointments for 2009-10 and a draft three-year rolling programme. This exercise has demonstrated one of the benefits of the unified system. It is now possible to plan for larger generic competitions, adjusting details as the programme develops.
59. Most selections for permanent judicial appointments must be made by the JAC. There are however some appointments which rest with me and where there is no requirement to involve the JAC. I welcome however the independence and assurance which JAC could bring to appointments e.g. of principal judges. I have agreed with the chair of the JAC a general protocol as to the way in which they



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might be involved. This is set out at **Annex 7**. Its essential point is that JAC will act as an assurance body as to the procedure we intend to follow. I am grateful to the JAC for its willingness to be involved in this way.

***Future Reviews***

60. Under the 2007 Act I am obliged to produce an annual report. As I indicated in my first review, I want my report to be useful to users and stakeholders and not duplicate reports produced by other bodies. Work is under way, in consultation with the AJTC, to identify what ground my first report should cover, and its timing. In the meantime I intend to publish further reviews of this kind, including one early in the New Year when more firm decisions about phase 2 and beyond have been made.

**RULES AND LEGISLATION**

<p><b><u>The Tribunal Procedure (Upper Tribunal) Rules 2008 SI 2698/2008</u></b></p> <p><a href="http://www.opsi.gov.uk/si/si2008/uksi_20082698_en_1">http://www.opsi.gov.uk/si/si2008/uksi_20082698_en_1</a></p>
<p><b><u>The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chambers) Rules 2008 SI 2699/2008</u></b></p> <p><a href="http://www.opsi.gov.uk/si/si2008/uksi_20082699_en_1">http://www.opsi.gov.uk/si/si2008/uksi_20082699_en_1</a></p>
<p><b><u>The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI 2685/2008</u></b></p> <p><a href="http://www.opsi.gov.uk/si/si2008/uksi_20082685_en_1">http://www.opsi.gov.uk/si/si2008/uksi_20082685_en_1</a></p>
<p><b><u>The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 SI 2686/2008</u></b></p> <p><a href="http://www.opsi.gov.uk/si/si2008/uksi_20082686_en_1">http://www.opsi.gov.uk/si/si2008/uksi_20082686_en_1</a></p>
<p><b><u>The Tribunals, Courts and Enforcement Act 2007 (Commencement No 6 and Transitional Provisions) Order 2008 SI 2696/2008</u></b></p> <p>This brings into force on 3 November 2008 most of Part 1 of the 2007 Act establishing the First-tier and Upper Tribunal and its functions.</p> <p>It also brings into force on 1 April 2009 various provisions of the 2007 Act which apply to the transfer of the tax tribunals into the First-tier and Upper Tribunal and the abolition of the existing tribunals and offices.</p> <p><a href="http://www.opsi.gov.uk/si/si2008/uksi_20082696_en_1">http://www.opsi.gov.uk/si/si2008/uksi_20082696_en_1</a></p>

**The Transfer of Tribunal Functions Order 2008-10-27**

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

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

Article 5 provides for members of the tribunals from which the functions are transferred by article 3 to hold offices in the First-tier Tribunal and Upper Tribunal.

Article 6 provides for an onward appeal right to the Upper Tribunal from decisions of the Mental Health Review Tribunal for Wales, the Special Educational Needs Tribunal for Wales and the Pensions Appeal Tribunals for Scotland and Northern Ireland (assessment appeals).

Schedule 4 makes transitional and saving provision for the treatment of cases which would previously have been dealt with by the tribunals from which the functions are transferred, or onward appeals from those tribunals, following the coming into force of the Order.

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110817828\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110817828_en_1)

**The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008**

This Order makes provision, in relation to matters that fall to be decided by the First-tier Tribunal or the Upper Tribunal, for determining the number of members of the tribunal who are to decide the matter (articles 2 and 3). Provision is also made for determining whether the member or members of the tribunal are to be judges of the tribunal or other members of the tribunal (articles 4 and 6). Where a matter is to be decided by two or more members of a tribunal, the Senior President will select one member to chair the tribunal (article 7). If a decision of such a tribunal is not unanimous it will be decided by a majority and, if necessary, the chair will have a casting vote (article 8).

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110817811\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110817811_en_1)

The Senior President's Practice Statements on composition of tribunals supplement the Order in relation to composition in different categories of case.

**The First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 SI 2684/2008**

This Order organises the First-tier and Upper Tribunal into chambers and makes provision for the allocation of the First-tier and Upper Tribunal's various functions between chambers.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082684\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082684_en_1)

**The Appeals (Excluded Decisions) Order 2008 SI 2707/2008**

Section 11 of the Tribunals, Courts and Enforcement Act 2007 provides that a party to a case has a right of appeal on a point of law from the First-tier Tribunal to the Upper Tribunal. But there is no right of appeal against a decision which is "excluded". Excluded decisions are listed in subsection (5) and this Order lists additional excluded decisions which are also prohibited from a right of appeal to the Upper Tribunal under section 11 of the 2007 Act.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082707\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082707_en_1)

**The Appeals from the Upper Tribunal to the Court of Appeal Order 2008**

This Order sets out the grounds on which permission (or leave) to appeal from the Upper Tribunal to the Court of Appeal may be granted and restricts appeals to the Court of Appeal to cases where the court or the Upper Tribunal considers that the proposed appeal would raise some important point of principle or practice.

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110817897\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110817897_en_1)

**Act of Sederunt (Rules of the Court of Session Amendment No.5) (Miscellaneous) 2008**

This Scottish Statutory Instrument provides that permission to appeal a decision of the Upper Tribunal to the Court of Session shall not be granted unless the court considers that the proposed appeal would raise some important point of principle or practice; or there is some other compelling reason for the court to hear the appeal.

This order will be available of the OPSI website shortly.

**The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 SI 2692/2008**

This Order sets out the qualifications or experience that a person must have in order to be eligible for appointment as a member of the First-tier Tribunal or Upper Tribunal who is not a judge of the tribunal.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082692\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082692_en_1)

**The Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 SI 2683/2008**

**Consequential amendments and revocations**

The Schedules to the Order make consequential amendments to, and revocations of, secondary legislation in respect of the functions of tribunals transferring to the First-tier Tribunal and Upper Tribunal on 3rd November 2008.

This Order also makes consequential amendments to secondary legislation in respect of the abolition of the Council of Tribunals and changes to the name of chairmen of employment tribunals.

**Extent**

The extent provisions in articles 3 and 4 preserve the current position in Scotland for appeals to the appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 (and appeals from that tribunal to the Social Security Commissioners) in relation to appeals under sections 157 and 159 of the Health and Social Care (Community Health and Standards) Act 2003. These functions are not transferred under the Transfer of Tribunal Functions Order 2008.

**Transitional Provisions**

Article 5 redirects potential appeals from the appeal tribunal (constituted under Chapter 1 of Part 1 of the Social Security Act 1998) against its decisions on appeals under section 8 of the Road Traffic Act 1999, from the High Court to the Upper Tribunal, where those decisions were made prior to the transfer of the tribunal, and the appeal right to the High Court has not been initiated.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082683\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082683_en_1)

**The Tribunals, Courts and Enforcement Act 2007 (Transitional Judicial Pensions Provisions) Regulations 2008 SI 2697/2008**

Paragraph 11(3) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007 provides that a person who becomes a transferred-in judge or other member of the First-tier Tribunal or Upper Tribunal (who has not previously held a qualifying judicial office) is entitled to elect for Part 1 of the Judicial Pensions and Retirement Act 1993 (c. 8) (judicial pensions) to apply to them. This Order provides that Part 2 of the Judicial Pensions (Miscellaneous) Regulations 1995, which sets out the circumstances, timing and manner in which an election for Part 1 of the 1993 Act to apply is made, applies to such an election.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082697\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082697_en_1)

**The Discipline of Judges (Designation) Order 2008 SI 2700/2008**

This order designates certain tribunal offices for the purposes of section 118 of the Constitutional Reform Act 2005. This means that those office holders will be subject to the discipline regime set out in Chapter 3 of Part 4 of the Constitutional Reform Act.

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082700\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082700_en_1)

**The Judicial Complaints (Tribunals) (No 2) Rules 2008**

These are the amended procedures for dealing with complaints against tribunal judges and members that take into account the changes under the TCEA 2007.

They will be available at: <http://www.judicialcomplaints.gov.uk/>

**The Community Legal Service (Funding) (Amendment No.2) Order 2008 SI 2704/2008**

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082704\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082704_en_1)

**The Community Legal Service (Funding) (Amendment No.2) Regulations 2008 SI 2703/2008**

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082703\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082703_en_1)

These bring about consequential changes to ensure the continuation of legal aid provision in light of the implementation of the TCEA 2007. The order allows mental health cases in the First-tier Tribunal to be funded, and appeals and judicial reviews that would previously have been funded in the High Court to be funded in the Upper Tribunal.

## PRACTICE DIRECTIONS & PRACTICE STATEMENTS

### Practice Directions

#### **First-tier Tribunal and Upper Tribunal**

- Child and vulnerable adult and sensitive witnesses
- Use of the Welsh language in tribunals in Wales

#### **Upper Tribunal**

- Transcripts of proceedings

#### **First-tier Tribunal**

- Asylum support cases – notice of appeal
- Mental health cases – contents of statements from the responsible authority and Secretary of State
- Special educational needs and disability discrimination in schools cases – information and documents required in the application notice and response, notification of rights of appeal, information for preparation for a final hearing and attendance at private hearings

These will be available at: <http://www.tribunals.gov.uk>

### Practice Statements

- Composition of tribunals
- Delegation of functions to staff
- Form of judgments and neutral citation
- Social security and child support cases in the Social Entitlement Chamber - record of proceedings

These will be available at: <http://www.tribunals.gov.uk>

### Lord Chief Justice's Direction - Classes of Cases Specified Under section 18(6) of the Tribunals, Courts and Enforcement Act 2007

This direction specifies the classes of case for the purposes of section 18(6) of the Tribunal, Courts and Enforcement Act 2007 that are to be transferred from the High Court to the Upper Tribunal from 3 November 2008.

Available at: <http://www.hmcourts-service.gov.uk/cms/497.htm>

## MINISTRY OF JUSTICE

### *Joint statement from the Lord Chancellor and the Senior President of Tribunals on the Pensions Appeal Tribunal*

#### **The Lord Chancellor and Secretary of State for Justice (Jack Straw):**

The Senior President of Tribunals and I are today issuing the following joint statement:

We are making this joint statement in recognition of the concerns expressed by members of the armed forces community about the possible impact on the service which the Pensions Appeal Tribunal (PAT) (England & Wales) provides for them as a result of implementing the Act.

To reflect the special nature of a jurisdiction serving those who alone in this country contract with the State to lay down their lives in its service and in recognition of the special relationship between service personnel and the Government as characterised by Command Paper [CM 7424 –*The Nation's Commitment: Cross Government Support to our Armed Forces, their Families and Veterans*] it has been decided to establish a 'War Pensions and Armed Forces Compensation Chamber' within the First-tier Tribunal to ensure that service personnel can benefit from the advantages of being within the new Tribunal structure, whilst ensuring that the unique nature of the jurisdiction is not compromised or diluted.

The implementation of the Act will bring benefits to this jurisdiction, including extended rights of appeal, a guarantee of continued Judicial independence, the ability readily to draw upon suitably qualified Judges and medical experts within the wider tribunal system if required, greater judicial support and influence; a more efficient administrative support; and access to the entire Tribunals Services' hearing venue network. None of this will be at the expense of the level of service now provided by the Pensions Appeal Tribunal (England & Wales) PAT (E&W). Our aim in making this statement is to ensure that the armed forces community are re-assured that the valued features of the PAT are preserved and protected in the new system.

This joint statement explains the basis on which the work of the PAT (E&W) will transfer into the First-tier Tribunal under section 30 of the Tribunals, Courts and Enforcement Act 2007, if Parliament approves the draft Transfer of Tribunal Functions Order 2008.



## ANNEX 2

That order transfers the functions of the PAT (E&W) into the First-tier Tribunal. That tribunal enjoys a statutory guarantee of continued judicial independence under section 3 of the Constitutional Reform Act 2005, as amended by section 1 of the Tribunals, Courts and Enforcement Act 2007. The present PATs do not have such a guarantee although in practice they are independent of Government. The transfer also makes it possible for there to be a further appeal on a question of law against assessment decisions by claimants in all parts of the United Kingdom, something which is not possible under the existing statutory framework.

The First-tier Tribunal will be divided into a number of chambers by an order made under s7 of the 2007 Act. The 'First-tier Tribunal and Upper Tribunal (Chambers) Order 2008' provides for the First-tier Tribunal to be organised into Chambers including a separate 'War Pensions and Armed Forces Compensation Chamber'. The order assigns all of the functions of the current PAT (E&W) to that Chamber. The order has the concurrence of the Lord Chancellor and the Senior President and has been laid before Parliament.

Procedural rules specific to the War Pensions and Armed Forces Compensation Chamber have been drafted and signed by the Tribunal Procedure Committee, following consultation with ex-service organizations, their advisers and the President of PAT (England and Wales) The rules have been submitted to the Lord Chancellor and have been laid before Parliament. In establishing rules that are specific to this chamber those who currently use PAT (E&W) will have the same level of procedural protection as users of the PATs in Scotland and Northern Ireland as rules will be made with the specific needs of this jurisdiction only in mind. Members of the armed forces community were concerned that this protection would not be provided if the chamber shared rules with other chambers in the First-tier Tribunal.

In further recognition of the special relationship other measures have been taken to ensure that appeal panels must include those who understand the particular nature of service in the armed forces; and for the jurisprudence in Scotland, Northern Ireland and England and Wales to remain consistent.

The Senior President of Tribunals has produced a draft Practice Statement on composition of tribunals. The President and Deputy President of the PAT have been consulted on the draft and are in agreement with it. The draft Practice Statement requires the continued use of Service members on hearing panels within the War Pensions and Armed Forces Compensation Chamber and maintains their present role without diminution or alteration. The 'Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order' as laid before Parliament requires that service members have considerable experience of service in Her Majesty's naval, military or air forces.

A decision made at a hearing of an appeal in this Chamber will normally be dealt with by a three member panel of one judge, one Service member and one Medical member. Alternatively, but only where the Chamber President considers it appropriate, a decision at a hearing may be dealt with by a four member panel of one judge, one Service member and two Medical members. Panels are expected to strive to reach a unanimous decision.

## **ANNEX 2**

Appeals from the War Pensions and Armed Forces Compensation Chamber and from the PATs in Scotland will lie to the Upper Tribunal created by the 2007 Act, which will take over the jurisdiction of the Pension Appeal Commissioners. Assessment appeals from the PATs in Northern Ireland will also lie to the Upper Tribunal and entitlement appeals will continue to go to the Pension Appeal Commissioners in Northern Ireland who are themselves judges of the Upper Tribunal. We therefore expect that the jurisprudence will develop in a common and coherent way across the United Kingdom.

The Lord Chancellor will in addition establish within three months an advisory steering group for armed services work with an independent chair. Representatives of charities who represent appellants at appeal hearings and proposed by COBSEO will be invited to join this group, as will representatives of the judiciary and administration for the PATs in Scotland and Northern Ireland. The remit of the group will include consideration of the implementation of existing procedures, changes the Government or Tribunal proposes to make to the procedures, and the applicability of any such changes across the jurisdictions.

The Lord Chancellor will ensure that staff deployed on armed services' work will be staff who understand armed services' requirements and who will work in effective liaison with the organisations who represent users.

"Branding" will continue to be distinct so that users understand they are dealing with a specialist armed forces jurisdiction.

The aim of making this statement is to set out how the valued features of the PAT are preserved and protected in the new system in recognition of the unique role of the armed forces community and in acknowledgement of the concerns that were raised in response to the consultation on implementation of Part 1 of the Tribunals, Courts and Enforcement Act.

**WORKING ARRANGEMENTS OF THE ADMINISTRATIVE APPEALS CHAMBER  
(PREPARED BY JUDGE HICKINBOTTOM, ACTING CHAMBER PRESIDENT)**

***Scope of work***

1. The Administrative Appeals Chamber (“AAC”) will deal with four types of work: (i) second-tier appeals, (ii) first-tier appeals, (iii) judicial reviews and (iv) urgent out-of-hours applications.

***Second-tier Appeals***

2. The AAC will hear appeals on points of law only and with permission from (i) all of the jurisdictions transferred into the First-tier Tribunal on 3 November except those of the Asylum Support Tribunal and CICAP, in respect of which the right of appeal is excluded under statute; and (ii) three devolved tribunals, the Mental Health Review Tribunal (Wales), SENT Wales and PAT (NI) (assessment appeals only).
3. The vast majority of this work (over 95%) will be those cases currently heard by the Social Security & Child Support Commissioners who deal with approximately 6,000 appeals a year. This work will continue to be done by the Commissioners and Deputies, who will be mapped across as Upper Tribunal Judges and Deputies. The Chief Commissioner presides over a limited number of test or guideline cases (perhaps 6-10 per year) and it is envisaged that the AAC President will continue to preside in these cases. Over and above that, the sittings of the President will be a matter for him/her: the work can be adequately covered by the current Commissioners, but it is likely that any President will continue to preside over most or all of these cases.

4. In respect of the non-welfare benefits second-tier appellate work, it is difficult to assess with accuracy the number of appeals that will be generated from the “new jurisdictions”, i.e. from the Health, Education and Social Care Chamber, MHRT (Wales) and SENT Wales. However, the best estimate is that there will be 100-150 such appeals per year. In most of those cases, there will be an application to the AAC for permission to appeal from the first-tier, which will be dealt with initially on the papers but with a right to reconsideration at an oral hearing. In the larger jurisdictions (MHRT, SENDIST and CST), it is likely that the proportion of cases in which that right will be exercised will be relatively high. In those cases in which permission to appeal is granted, then of course there will be a substantive hearing. Very roughly, it is estimated that there might be 75-100 oral hearings in respect of permission, with perhaps half that number moving to a full hearing: although it is likely that initially the number of full hearings may be higher with representatives “testing the waters” of the new regime as well as seeking guidance on the substantive law in a number of test cases.

*First-tier Appeals*

5. In a limited number of jurisdictions, the AAC will also deal with first instance appeals, the largest being those concerned with safeguarding vulnerable groups currently dealt with by the Care Standards Tribunal.
6. This work will initially be administered in the same office as the other care standards jurisdictions, and generally heard by judges from those jurisdictions who are also assigned to the AAC (headed by HHJ David Pearl).

*Judicial Review*

7. In addition, the AAC will have the powers of judicial review in respect of cases transferred to it either by category (by way of a Practice Direction of the Lord Chief Justice) or by individual case (transferred by order of the Administrative Court). In terms of the former, the Lord Chief Justice has indicated that for 3 November he proposes to transfer two categories of case, namely (i) challenges to CICAP decisions and (ii) challenges to interlocutory decisions of the First-tier Tribunal which are not subject to an appeal.
  
8. Again, it is difficult to estimate numbers, but they are likely to be relatively small. There are currently 8 judicial reviews of CICAP decisions in the Administrative Court, and it is unlikely that there will be more than 10-15 per year even under the new regime. Challenges to interlocutory decisions are likely to be greater in numbers, particularly given the strike out powers given to the First-Tier Tribunal by the new procedural rules. Strike out decisions will not be appeal able, but only judicially reviewable. However, even with some individual cases transferred by the Administrative Court, it is unlikely that there will be more than 50 judicial reviews per year.

*Urgent Out-of-Hours Applications*

9. In addition, there is at least the possibility of urgent applications to the AAC that will require consideration overnight, at weekends or during Bank Holidays, from the MHRT jurisdiction pending an appeal from either the Health, Education and Social Care Chamber or MHRT (Wales). Any such applications are likely to be extremely rare.

***Judicial Resources***

10. The permanent judges of the AAC will be the current Commissioners, who (with the current Deputies) will continue to deal with appeals from the welfare benefit jurisdictions (i.e. appeals from the Social Entitlement Chamber and the War Pensions & Armed Forces Compensation Chamber) in much the same way as they deal with appeals now. In the foreseeable future it is not envisaged that any other judicial resources will be necessary to deal with this work: and, in particular, that no significant High Court Judge time will be required, except to deal with the limited number of guideline cases.
  
11. However, with some limited exceptions, the Commissioners have relatively little experience in the Health, Education and Social Care fields. It is proposed that most of this work is initially borne by the AAC President, with assistance from the Senior President and other available judges who already have sufficient experience and expertise in the relevant field to be able to deal with cases without more. Other judges will be inducted into these jurisdictions over time, and a training and development programme is being developed to ensure that (by April 2009) some of the current Commissioners are equipped to deal with at least some of the work from these jurisdictions. In the future, it is hoped that most AAC judges will be able to deal with most of the work in the AAC - but this is a longer term aim.

*Judicial Reviews:*

12. It is estimated that up to 50 judicial reviews per year will be transferred to or commenced in the AAC under the present transfer arrangements. Under Section 18(8) of the 2007 Act, the judge presiding at the hearing of judicial reviews in the AAC must be either a High Court Judge or a Judge of the Court of Appeal, or a judge nominated by the Lord Chief Justice and Senior President. The Senior President has proposed to Lord Judge that, in addition to the President of the AAC, two tribunal judges who are authorised to sit as Deputies in the Administrative Court (HHJ David Pearl, and Mark Ockleton, Deputy President of the AIT)) be nominated. However, even with these resources, it is expected that most of the judicial review work will in practice be dealt with by the AAC President or another High Court Judge.
  
13. In relation to urgent out-of-hours business, given the limited resources available to the AAC and the very limited scope for urgent applications in the AAC, and subject to the approval of the President of the QBD, it is proposed that the QBD Duty Judge should deal with any applications that might be made outside office hours, and the relevant details of that judge should be given in the AAC guidance material. Although such applications are unlikely, that will provide a suitable procedural mechanism for dealing with any that may be made without significantly increasing the workload of the Duty Judge.

***Administrative arrangements***

*Registrars*

14. The judiciary in the AAC will be supported by legal staff, the Commissioners' Legal Officers being transferred across as Registrars. The Registrars will deal with minor interlocutory matters, as well as undertaking legal research and managing block cases (i.e. cases dependent upon test cases proceeding in the higher courts).

15. The Senior Registrar will be Jill Walker who, in addition to supervising the Registrars and Legal Information Officers and liaising with the administration, will be a member of the Case Management Group and act as the Secretary to the Editorial Board.

*Location*

16. It is proposed that the Administrative Appeals Chamber will have a base in each of the four home jurisdictions.
17. In England, its Office will initially be in Procession House. The staff of the Commissioners' Office will be transferred over, and be supplemented by a new team (headed by Heather Nelmes) who will deal with the non-welfare benefit appeals and judicial reviews. We are fortunate to have obtained the services of Heather, who has previously worked with the Administrative Court. As part of the project to vacate Procession House, the Office will move up Farringdon Street to Cardinal Tower in early 2009. The Upper Tribunal Judges in the AAC will initially be housed in Harp House, although some oral hearings (particularly in non-benefit appeals and judicial reviews) will be heard in Field House. From late 2010, it is proposed to move the AAC (both Office and Judges) to the Rolls Building (directly opposite Field House).
18. Although it is expected that most AAC hearings will be held in Field House and Harp House, flexibility will be maintained with regard to hearing venues both within London and elsewhere. The AAC will sit regularly in Manchester, and arrangements are being made to ensure that appeals can be heard at other venues throughout England when appropriate.
19. In Scotland, the Commissioners and their Office will be transferred across, and continue to work out of George House in Edinburgh.



20. In Northern Ireland, most of the subject matter dealt with by the AAC is devolved and will continue to be dealt with by the appropriate part of the Northern Ireland justice system, including the Northern Ireland Social Security Commissioners under its Chief Commissioner, HHJ John Martin. However, assessment appeals from the War Pensions & Armed Forces Compensation Chamber will be heard by the AAC in Northern Ireland, and the Northern Ireland Social Security Commissioners are being mapped across as Upper Tribunal Judges, posts which they will hold in parallel with their current positions. The AAC Office will be run in parallel with the Commissioners' Office in Northern Ireland (1st Floor, Headline Building, 1-14 Victoria Street, Belfast, BT1 3GG.)
21. In Wales, over the next year it is proposed to develop a fully functioning AAC Office in Cardiff Civil Justice Centre in parallel with the new Administrative Court Office there. In the meantime, so that appeals in Welsh cases can be issued in Wales, a postal address is being made available for this purpose. In pursuit of the commitment to hear Welsh cases in Wales where the parties wish it, Upper Tribunal Judges will sit regularly in Cardiff as well as other venues in Wales.

*Naming and Publication of Decisions*

22. Arrangements are being made for the publication of relevant AAC decisions (together with any First-tier Tribunal decisions that warrant publication). Any case published on the web will have a neutral citation number assigned to it, in form "[2008] UKUT 123 (AAC)". In addition to other sites (including jurisdiction sites, which will be maintained), all of these cases will be captured on BAILII. The precise nomenclature of cases is being finalised, but it is proposed to name cases by reference to both appellants/applicant and respondent with (where appropriate) key words, similar to the AIT format.

23. Most of the jurisdictions with which the AAC will deal currently anonymise all decisions and, at least initially, this will continue where this is the current practice. However, given the need for openness and recent developments in other jurisdictions, over the next six months I propose to consult on whether anonymity should be maintained in all cases in all of these jurisdictions.

## **SUGGESTED TYPOLOGY FOR COMMUNICATIONS**

### **1. Practice Directions**

Instructions which supplement and amplify the Procedure Rules by requiring all parties within a defined class to carry out specific acts in dealing with the tribunal, or by setting out how the tribunal will conduct its business in specified circumstances.

Practice Directions will have a broader application than case management directions, which are specific to identified appeals.

S.23 TCE Act governs the making of Practice Directions. The Senior President (SP) may give directions as to the practice and procedure of the First-tier Tribunal and of the Upper Tribunal. A Chamber President (CP) may give directions as to the practice and procedure of the chamber over which he or she presides. SP Practice Directions require the approval of the Lord Chancellor. CP Practice Directions require the approval of both the SP and the Lord Chancellor.

In the case of directions consisting of criteria for the composition of tribunals, the Lord Chancellor is to be consulted.

The requirement to involve the Lord Chancellor should mean that the power to make Practice Directions is to be used sparingly, perhaps being reserved to matters considered “high profile” in the sense that a public commitment has been given on the point.

An example: The preservation of classes of expert members in relation to specified categories of proceedings.

### **2. Practice Statements**

There is a degree of overlap between the scope of Practice Statements and Practice Directions. The difference may be one of profile and flexibility. A failure on the part of a party to proceedings to comply with a Practice Statement would not trigger the sanctions set out in the Rules. They may, therefore, be said to be more in the nature of what the tribunal expects rather than demands of the parties.

To be made by a CP or CPs with the approval of the SP.

An example: A statement on the use of interpreters in the First-tier Tribunal, indicating that the tribunal itself will appoint tribunal approved interpreters.

### **3. User Guidance**

Material produced in “public information” style and designed to assist the user in making effective use of the appeals process. The more the information focuses on a specific jurisdiction, the more useful it is likely to be. Editorship should, accordingly, rest with the Principal Judge.

### **4. Judicial Benchbook**

A guide to practice and procedure aimed at the tribunals judiciary. Again, the guidance is likely to be more useful if focussed upon a specific jurisdiction, though there may be a section that addresses issues common to all tribunals. Editorship should rest with the Principal Judge.

### **5. Judicial Circulars**

While the Benchbook contains guidance on practice and procedure expressed in terms of what constitutes good practice, there is likely to be occasion where a judicial lead considers it appropriate to issue instructions on the performance of the office of tribunal judge and member.

An example: Participation in a judicial appraisal scheme.

To be made by a CP or CPs with the approval of the SP.

### **6. Protocols**

Relations between the First-tier Tribunal and the Upper Tribunal or between different Chambers might be governed by a Protocol, made by the respective judicial leads with the approval of the SP.

An example: A procedure for assignment of members. Or, in the case of a hybrid jurisdiction, arrangements for transferring cases.

### **7. Service Agreements**

A Service Agreement may be a useful device for setting standards, so that the tribunals judiciary and the Tribunals Service have a shared understanding of what may reasonably be expected of each other. There is always the risk with Service Agreements that they institutionalize working relations at a minimum level rather than promote the development of co-operation. However, they may have a particular value at a time of major organisational change when established methods of working and existing business relations are broken up.

An example: clerking arrangements at a multi-jurisdictional hearing centre.

Second Implementation Review  
30.10.08 - As published

**ANNEX 4**

To be agreed at the relevant organisational level – typically between jurisdictional lead and Principal Judge.

## **CHECKLIST FOR PRACTICE DIRECTIONS UNDER THE TCEA 2007**

### **Initiating a Practice Direction**

1. Practice Directions as to the practice and procedure of the First-tier and Upper Tribunal are made under section 23 of the Tribunals, Courts and Enforcement Act 2007 by either the Senior President of Tribunals, or a Chamber President in relation to the chamber over which he presides.
2. Any proposal for a Practice Direction should be made by a Principal Judge or Key Account Manager to the relevant Chamber President or by a Chamber President to the Senior President, and be accompanied by a first draft.
3. Where a Practice Direction is to be made by a Chamber President they must first consider whether it should apply across the First-tier and / or Upper Tribunal and, if so, the matter should be referred to the Senior President.
4. The Senior President or Chamber President will instruct MoJ Legal to produce a draft Practice Direction, unless the proposed Practice Direction does not relate to Tribunal Procedure Rules in which case any first draft will be used for consultation purposes.

### **Consultation**

5. Once approved by the Senior President or Chamber President the draft will be sent to the Tribunal Procedure Committee Secretariat who will send it to:
  - a. The Tribunal Procedure Committee for comment.
  - b. Any relevant Key Account Manager for consultation with any Other Government Department or decision-making body who would be a respondent in the type of proceedings concerned.
  - c. Other interested parties, including any devolved Tribunal with equivalent jurisdiction and which may have an interest.
6. The Tribunal Procedure Committee Secretariat will collate the comments from the consultation for consideration by the Senior President or Chamber President. A final draft will then be produced.

### **Obtaining the Senior President's approval**

7. Where the Practice Direction is to be made by a Chamber President, in accordance with section 23(5)(a) of the TCEA 2007 the final draft must be approved by the Senior President. The Senior President's approval should be sought (via the Legal Secretary to the Senior President) before it is sent to the Lord Chancellor for approval (see model letter at Annex A).

### **Obtaining the Lord Chancellor's approval**

8. In accordance with section 23(4) and (5)(b) of the TCEA 2007 the Senior President or Chamber President must seek the approval of the Lord Chancellor before handing down Practice Directions except to the extent that it consists of guidance about any of the following:
  - a. The application or interpretation of the law;
  - b. The making of judicial decisions by members of the First-tier or Upper Tribunal.
9. In accordance with section 23(7) of the TCEA 2007 there is no need to obtain the approval of the Lord Chancellor to the extent that the Practice Direction consists of criteria for determining which members of the First-tier Tribunal or Upper Tribunal may be chosen to decide particular categories of matter; but those directions may only be given after consulting the Lord Chancellor.
10. The Senior President or Chamber President will write to the Lord Chancellor and ask either for his approval, or (if the Practice Direction falls within paragraph 9 above) for his views. A letter expressing the Lord Chancellor's agreement should be obtained before the Practice Direction is made.
11. All correspondence should be copied to the Tribunal Procedure Committee Secretariat as they will advise the Lord Chancellor as to the merits of the Practice Direction.
12. The Tribunal Procedure Committee Secretariat will send the approved Practice Direction to the Office of the Senior President or Chamber President for it to be made.

### **Publication**

13. The Office of the Senior President or the Chamber President will confirm to the Tribunal Procedure Committee Secretariat that the Practice Direction has been made and the Secretariat will then place the Practice Direction on the Tribunal Procedure Committee and Tribunals Service's website.

**APPENDIX A – MODEL LETTER FOR SEEKING SENIOR PRESIDENT’S APPROVAL**

Dear

**Practice Direction [X]**

*[Background to and reasons for the Practice Direction]*

*[Details of those already consulted and any views expressed]*

My view is that such a Practice Direction should be made and I am therefore seeking your approval as is required by section 23(5)(a) of the TCEA 2007.

I attach a draft of the Practice Direction to this letter.

Should you *[and the Lord Chancellor - if appropriate]* agree, I expect that the Practice Direction will be made on [X] and come into effect on [X].

Yours



**APPENDIX B - CONTACTS**

**Presidents' Offices:**

Senior President of Tribunals	[X]	
Legal Secretary to the Senior President of Tribunals		[X]
Administrative Appeals Chamber President	[X]	
SEC President		[X]
HESC President		[X]

**Key Account Managers:**

Administrative Appeals Chamber		[X]
Social Entitlement Chamber	[X]	
Health, Education and Social Care Chamber		[X]

**TPC Secretariat:** [X]

**MoJ Legal** [X]

## PROPOSED TIMETABLE FOR PHASE 2

Apart from Tax and Duties these dates for future transfers are subject to further planning and consultation with the administration and agreement with the Lord Chancellor, so must continue to be regarded as planning assumptions only.

**April 09**      **First-tier Tribunal: Tax and Duties Chamber**

- Comprises the work of the General and Special Commissioners; VAT and Duties tribunal and Section 709 Tribunal

**Upper Tribunal**

- Lands Tribunal transfers in as a separate chamber
- Appeals from First-tier Tax and Duties Chamber to be heard in the Upper Tribunal in a new chamber

**July 09**      **Asylum & Immigration Chambers** (subject to Government decisions on whether to proceed with integration of AIT into the new system)

**Sept 09**      **General Regulatory Chamber** (tranche 1) proposed content

- Charities
- Consumer Credit
- Estate Agents

**Jan 10**      **General Regulatory Chamber** (tranche 2) proposed content

- Gambling
- Claims Management
- Information
- Immigration Services
- Transport (some Transport jurisdictions may go to the Upper Tribunal)
- Adjudication Panel for England

## **ANNEX 6**

The following tribunals will also transfer at this time but which chamber they will join is not yet settled

- Gender Recognition Panel
- Family Health Services Appeal Authority,
- Reserved Forces Appeals
- Adjudicator to HM Land Registry

### **Upper Tribunal**

Financial Services and Markets  
Pensions Regulator

## TRIBUNAL JUDICIAL LEADERSHIP POSTS ROLE OF JUDICIAL APPOINTMENTS COMMISSION

### Issue

1. This paper invites the Commission to agree to a role in the selection of non-statutory judicial leadership posts in tribunals, after the implementation of the Tribunals Courts and Enforcement Act 2007.

### Background

2. The TCE Act creates a limited number of new tribunal judicial offices:
  - Senior President
  - Chamber President
  - Deputy Chamber President
  - Upper Tribunal Judge
  - Deputy Upper Tribunal Judge
  - First Tier Tribunal Judge
  - Upper Tribunal member
  - First Tier Tribunal member
3. When Part 1 of the Act is implemented existing tribunal office holders will, by order, map into one or more of these offices as their existing jurisdictions are transferred to the Upper or First-tier Tribunals. Initially it is intended that there will be two chambers in the First-Tier Tribunal, each containing three or four existing tribunals and each with a President, who has already been selected by the JAC. There will be no statutory Deputy Chamber Presidents. Presidents, Deputy Presidents and regional and district chairs of former tribunals will retain any salary leads and will be given delegated responsibilities from the Senior President. These are intended to place them broadly in the same relationship to the former judges and members of the old tribunal as they were before implementation. i.e. their powers will be the same but will be based on delegation not directly in statute. They will hold non-statutory offices e.g. principal judge for a particular jurisdiction within a chamber, or regional judge. These arrangements have been designed to make a smooth transition to the new structure possible.

### New Appointments

4. Holders of statutory offices will be selected by the JAC except where the Act permits a position to be filled by deployment of a Lord Justice or a High Court judge. Appointment to non-statutory offices will arise in two circumstances:

**ANNEX 7**

- where a former judicial leader retires and his or her role needs to be continued; and
  - where the Senior President wishes to create a judicial leadership role which is not equivalent to a pre-implementation role. (The precise nature of any new role will be defined by the Senior President's decisions on delegation, with the remuneration level a matter for the Lord Chancellor).
5. The process to be followed will depend on whether the post is temporary or permanent, and whether the post is to be regarded as a promotion.
6. The intended approach is:
- (a) If a post is temporary or for a fixed term, there is no salary lead and the role would not be seen as promotion the Senior President or chamber president will deploy someone, with a discretion to run an expressions of interest exercise among the existing tribunal judiciary. A typical post in this category would be a judge in charge of training or a judge with responsibility for developing new procedures;
  - (b) Where a role does involve a higher salary (which would have to be agreed by the Lord Chancellor) or would be seen as promotion but is still temporary or fixed term the Senior President intends to initiate an expressions of interest exercise among the existing tribunal judiciary, and possibly among court judges eligible to sit in tribunals. A typical post in this category would be principal judge in charge of a jurisdiction within a chamber. Selection procedures would vary, depending on the nature of the post and the number of interested applicants. There would always be an independent element (eg an independent member on the interviewing panel) in the process.
  - (c) If the role involves a higher salary and is permanent there will be an open competition, although it is unlikely that there will be such posts.
7. The cost of any exercises of this kind would be borne by the Tribunals Service and they would be organised by the Tribunals Judicial Office.
8. JAC is invited to agree to support the Senior President's role under (b) or (c) above in three ways:
- first by endorsing the Senior President's proposed approach to these appointments;
  - secondly by being willing in principle to evaluate and provide assurance as to the procedure to be followed in any individual exercise if the Senior President requests it,

**ANNEX 7**

- and thirdly by making the Commission's panel members available to sit on any interview panel.
9. The number of non-statutory post is likely to be comparatively small so any demand on the Commission's resources or any call on the time of panel members would also be small.