

EXPLANATORY MEMORANDUM TO
THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
(COMMENCEMENT NO. 5 AND TRANSITIONAL PROVISIONS) ORDER
2008

2008 No. 1653 (C.73)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1. This Order is the fifth commencement order under the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”).
- 2.2. The Order brings into force on 21st July 2008 sections 50 (now fully), 51 (now fully) and 52 (now fully) of, and Schedule 10 to, the Act. These provisions relate to eligibility for judicial office. The Order also contains transitional provisions regarding selection exercises for judicial appointments that are in train at the time of commencement.
- 2.3. The order brings into force section 48(1) partially, paragraph 27 of Schedule 8 to the 2007 Act as it applies to the powers of a Minister and paragraph 24 of Schedule 7. These provisions relate to the consultation required when tribunal rules are made.

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

- 2.1 None

4. Legislative Background

- 4.1. The 2007 Act contains 3 sections (50-52) revising the eligibility requirements for judicial appointment. Section 50 introduces the judicial-appointment eligibility condition and provides that where reference is made to the judicial-appointment eligibility condition in statute candidates for judicial office must hold a relevant qualification and have gained experience in law over a period whilst holding that qualification. Section 50(4) of the 2007 Act provides that a person holds a relevant qualification if the person is a solicitor or barrister or holds a qualification specified in an order made under section 51(1) of that Act in relation to offices identified in the order.
- 4.2. Section 52 of the 2007 Act defines what is meant by gaining experience in law for these purposes.
- 4.3. Eligibility for specific judicial offices, for the most part, is set out elsewhere in statute. Schedule 10 to the 2007 Act substitutes, where relevant, reference to the judicial-appointment eligibility condition in place of the existing eligibility requirements for specified offices in England and Wales and also lowers the

number of years' experience required from 10 to 7 and from 7 to 5 years in England, Wales, Scotland and Northern Ireland.

- 4.4. Paragraph 24 of Schedule 7 prescribes for procedural rules for tribunals made by a Minister to be subject to consultation by the Administrative Justice and Tribunals Counsel ("AJTC"). This paragraph also removes the requirement for rules made by the Tribunal Procedure Committee to be subject to consultation by the AJTC. The commencement of paragraph 27 of Schedule 8 is a consequential amendment in respect of commencing paragraph 14 of Schedule 7, removing the current requirements for consultation for rules made by Ministers.

5. Territorial Extent and Application

- 4.1 This instrument extends to England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- 7.1. The policy intention of the eligibility changes set out in Sections 50-52 of the 2007 Act is to widen the eligibility criteria for appointment to judicial offices in England, Wales, Scotland and Northern Ireland and to ensure that all those with the relevant skills and experience can apply for judicial office. Widening the pool of those eligible to apply will support the policy aim to encourage diversity in the range of persons available for selection for judicial appointments. Judicial Diversity is a priority for the Ministry of Justice.
- 7.2. This Order was drafted in consultation with the Ministry of Justice Implementation Project Board, on which both the Judicial Appointments Commission and Tribunals Service were represented. The Project Board started to consider implementation of the 2007 Act regarding judicial appointments in July 2007 and continues to do so. The Project Board considered the draft commencement order from March until May 2008 and is content with the Order.
- 7.3. The Trilateral Judicial Diversity Strategy, agreed in 2006 between the Lord Chancellor, Lord Chief Justice and the Chairman of the Judicial Appointments Commission, had four key strands:
- Strand 1 - Promote judicial service and widen the range of people eligible to apply for judicial office
 - Strand 2 - To encourage a wider range of applicants, so as to ensure the widest possible choice of candidates for selection
 - Strand 3 - Promote diversity through fair and open processes for selection to judicial office solely on merit

- Strand 4 - Ensure that the culture and working environment for judicial office holders encourages and supports a diverse judiciary and increases understanding of the communities served

The legislative changes set out in this Order will support Strand 1 – widening the range of people eligible to apply.

- 7.4. The AJTC (created by section 44 of the 2007 Act) replaced the Council of Tribunals (abolished by section 45 of the 2007 Act). Schedule 7 of the 2007 Act sets out the functions of the AJTC including in paragraph 24 the requirement for them to be consulted in the making of procedural tribunal rules. This paragraph also removes the requirement for rules made by the Tribunal Procedure Committee to be subject to consultation by the AJTC. This is because the AJTC are represented on the Tribunal Procedure Rule Committee. The intention in establishing the Tribunal Procedure Committee was to centralise the rule making power for tribunals and for tribunal rules to be made by judiciary, members and representatives of users. The Act requires the Lord Chancellor to appoint to the committee one person nominated by the Administrative Justice and Tribunals Council. In bringing the council into the rule making body, the requirement to consult with them prior to making rules is no longer required as a separate provision.

8. Impact

- 8.1. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector.

9. Contact

- 9.1. Any enquiries about the contents of this memorandum should be addressed to: Philippa Baker
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