

Explanatory Memorandum to the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007

This Explanatory Memorandum has been prepared by the Strategic Policy, Legislation and Communications Department and is laid before the National Assembly for Wales.

(i) **Description**

The Tribunals, Courts and Enforcement Act 2007 provides for the establishment of the Administrative Justice and Tribunals Council to replace the Council on Tribunals. The Administrative Justice and Tribunals Council will adopt a role in relation to the supervision of tribunals similar to that currently exercised by the Council on Tribunals. In addition the AJTC will be charged with keeping the administrative justice system as a whole under review.

There is a provision in the Tribunals, Courts and Enforcement Act 2007 for the Welsh Ministers to provide for a tribunal to be a listed tribunal so that it will come under the oversight of the Administrative Justice and Tribunals Council.

This Order adds all those Tribunals for which Welsh Ministers are the responsible authority to the “listed tribunals”.

(ii) **Matters of special interest to the Subordinate Legislation Committee**
None

(iii) **Legislative Background**

Schedule 7 of the Tribunals, Courts and Enforcement Act 2007 makes provision for membership and committees of the Administrative Justice and Tribunals Council. It also makes provision in relation to the functions of the Administrative Justice and Tribunals Council, such as keeping under review, considering and reporting on matters relating to the “listed tribunals” and being consulted on rules for them.

On the coming into force of the Act the only “listed tribunals” were the two new tribunals provided for in paragraph 25(1) of Schedule 7, being the First-tier Tribunal and the Upper Tribunals.

This Order, made under paragraph 25(2) of Schedule 7 of the Tribunals, Courts and Enforcement Act 2007, adds to the “listed tribunals” all those entities in relation to which the Welsh Ministers are the “appropriate authority”.

Paragraph 27 of Schedule 7 provides that the Welsh Ministers are the responsible authority for a tribunal if all of the tribunal’s functions are exercisable in relation to Wales and the Welsh Ministers have the sole power to either appoint its members or to make procedural rules for it or to do both of those things.

This instrument is made using the negative resolution procedure.

(iv) **Purpose and intended effect of the legislation**

The Tribunals, Courts and Enforcement Act 2007 (the TCE Act 2007), provides for the abolition of the advisory Non Departmental Public Body (NDPB), the Council on Tribunals (CoT), and its replacement by another advisory NDPB called the Administrative Justice and Tribunals Council (AJTC).

Para 25(2) of Schedule 7 to the Act makes provision for an authority to make an order providing for a tribunal to be a listed tribunal for the purposes of that Schedule if, or to the extent that, the tribunal is one for which the authority is responsible. The effect of the order is to bring the listed tribunals under the oversight of the AJTC.

The Welsh Ministers are the responsible authority for a tribunal for the purposes of Schedule 7 of the TCE Act if:-

- all of the tribunal's functions are exercisable only in relation to Wales, and
- the Welsh Ministers have the power to appoint the members of the tribunal and/or make procedural rules for the tribunal.

The Welsh Ministers are the responsible authority for a tribunal that exercises functions in relation to Wales and also exercises those or other functions in relation to somewhere other than Wales, if:-

- the Welsh Ministers have the power to appoint the members of the tribunal who exercise the tribunal's function in relation to Wales and/or have the power to make procedural rules for the exercise of the tribunal's functions in relation to Wales.

The powers to appoint members or make procedural rules must be exercisable by the Welsh Ministers and not by the Welsh Ministers jointly or concurrently with a Minister of the Crown.

(v) **Implementation**

The tribunals covered by this Order are those for which the Welsh Ministers are the responsible authority, as defined by para 27 of Schedule 7. Those tribunals that come under the authority of either the Lord Chancellor or Scottish Ministers for the purpose of listing will be covered by Orders being prepared by the Ministry of Justice and the Scottish Executive.

All three Listing Orders are intended to come into force on 1 November 2007.

(vi) **Consultation**

No consultation has been undertaken.

(vii) **Regulatory Impact Assessment**

A RIA has not been prepared as this legislation is made in the exercise of statutory powers granted by primary legislation which do not give the Welsh Ministers a discretion as to how those powers should be exercised.