

Draft Order laid before Parliament under section 49(5) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

TRIBUNALS AND INQUIRIES

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

Made - - - - *****
Coming into force - - *3rd November 2008*

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 145(1) of, and paragraph 15 of Schedule 4 to, the Tribunals, Courts and Enforcement Act 2007⁽¹⁾.

In accordance with paragraph 15(8) of that Act the Lord Chancellor has consulted the Senior President of Tribunals.

In accordance with section 49(5) of that Act a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 and comes into force on 3rd November 2008.

Number of members of the First-tier Tribunal

2.—(1) The number of members of the tribunal who are to decide any matter that falls to be decided by the First-tier Tribunal must be determined by the Senior President of Tribunals in accordance with paragraph (2).

(2) The Senior President of Tribunals must have regard to—

- (a) where the matter which falls to be decided by the tribunal fell to a tribunal in a list in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 before its functions were transferred by order under section 30(1) of that Act, any provision made by or under any enactment for determining the number of members of that tribunal; and
- (b) the need for members of tribunals to have particular expertise, skills or knowledge.

Number of members of the Upper Tribunal

3.—(1) The number of members of the tribunal who are to decide any matter that falls to be decided by the Upper Tribunal is one unless determined otherwise under paragraph (2).

(2) The tribunal may consist of two or three members if the Senior President of Tribunals so determines.

Tribunal consisting of single member

4.—(1) Where a matter is to be decided by a single member of a tribunal, it must be decided by a judge of the tribunal unless paragraph (2) applies.

(2) The matter may be decided by one of the other members of the tribunal if the Senior President of Tribunals so determines.

Tribunal consisting of two or more members

5. The following articles apply where a matter is to be decided by two or more members of a tribunal.

6. The number of members who are to be judges of the tribunal and the number of members who are to be other members of the tribunal must be determined by the Senior President of Tribunals.

7. The Senior President of Tribunals must select one of the members (the “presiding member”) to chair the tribunal.

8. If the decision of the tribunal is not unanimous, the decision of the majority is the decision of the tribunal; and the presiding member has a casting vote if the votes are equally divided.

By authority of the Lord Chancellor

Date

Parliamentary Under-Secretary of State,
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

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).

A Regulatory Impact Assessment was prepared for the Tribunals, Courts and Enforcement Act 2007. This can be found at:

<http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm>