

**EXPLANATORY MEMORANDUM TO
THE DRAFT TRANSFER OF TRIBUNAL FUNCTIONS AND REVENUE AND
CUSTOMS APPEALS ORDER 2009**

2009 No. []

1. This explanatory memorandum has been jointly prepared by HM Revenue and Customs (HMRC) and the Ministry of Justice (MoJ) and is laid before the Houses of Commons and Lords by Command of Her Majesty.

The memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

- 2.1 The draft Order transfers the functions of tax tribunals to the new tribunals established under the Tribunals, Courts and Enforcement Act 2007 (the TCEA) and makes consequential amendments to legislation relating to tax tribunals and the appeals they consider. In addition the Order makes changes to HMRC appeals and review processes and related administrative changes.

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

3.1 Type of resolution

- 3.1.1 The draft Order is subject to the affirmative resolution procedure and must be approved by both Houses of Parliament.
- 3.1.2 The Order is jointly made by the Lord Chancellor and the Treasury in exercise of the powers granted by the TCEA, and the Finance Act 2008 (FA 2008).
- 3.1.3 The Order amends primary and secondary law.

4. Legislative background

4.1 General

- 4.1.1 TCEA section 146 and Schedule 23 part 1 provide for the abolition of the offices of the Commissioners for the general purposes of the income tax. These provisions have been brought into effect from 1 April 2009 by article 6 of The Tribunals, Courts and Enforcement Act 2007 (Commencement No. 6 and Transitional Provisions) Order 2008 (SI 2008/2696).
- 4.1.2 This draft Order is made under sections 30(1) and (4), 31(1), (2) and (9) and 38 of, and paragraph 30 of Schedule 5 to, the TCEA, and section 124 of FA 2008.
- 4.1.3 The Order makes legislative changes to transfer the functions of the four existing tax tribunals to the tribunals established under the TCEA, abolish existing tax tribunals other than the General Commissioners and consequentially amend tax and other enactments. These provisions are made under the TCEA vires.
- 4.1.4 It also makes changes to legislation governing the administration by HMRC of appeals against tax decisions. The changes streamline HMRC's administration of tax appeals and introduce an optional statutory review of appealable decisions. These changes are made under the powers conferred by section 124 of FA 2008.
- 4.1.5 HMRC and MoJ officials have worked closely together so that development of the new tax tribunal procedures and HMRC appeals administrative changes are aligned. If Parliament approves, the Order will come into effect on 1 April 2009, so that the

new unified tax tribunal and HMRC's administrative changes will come into effect at the same time.

4.1.6 Separate instruments will provide for the establishment of the First-tier Tribunal and Upper Tribunal Chambers that will consider tax appeals and Tribunal Procedural Rules.

4.2 *EU legislation*

4.2.1 This instrument does not implement EU legislation.

5. Territorial extent and application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Lord Chancellor (Jack Straw) and the Financial Secretary (Stephen Timms) have made the following statement regarding Human Rights.
- 6.2 In our view the provisions of the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 are compatible with convention rights.

7. Policy background

7.1 Tribunal reform

- 7.1.1 The TCEA received Royal Assent on 19 July 2007. It provides for a new judicial and legal framework for appeal tribunals with a clearly independent judiciary under a Senior President, and creates a single two-tier national tribunal structure.
- 7.1.2 The new tribunal will be sub-divided into Chambers, both in the First-tier and Upper Tribunal. There will be a Chamber in the First-tier that will consider most first instance appeals against tax decisions. Appeals against the determination of the First-tier Tribunal will be heard in the Upper Tribunal. A small number of cases involving complex legal argument may exceptionally be heard by the Upper Tribunal at first instance.
- 7.1.3 The policy intention behind the TCEA 2007 is to provide a better quality service through the development of more coherent and consistent procedures across tribunals. This will also support more flexibility in the deployment of existing judiciary and improved judicial career paths. The new tax chamber will operate with one set of rules for all tax regimes. The tribunals will be manifestly independent of decision-making Government departments.
- 7.1.4 The MoJ issued a consultation document ‘Transforming Tribunals – Implementing Part 1 of the Tribunals, Court and Enforcement Act 2007’ on 28 November 2007: the Government’s response was published on 19 May 2008. Consultation responses supported a new unified Tax Chamber, with cases heard by a unified professional judiciary and administrative support provided by the Tribunals Service.
- 7.1.5 The Tribunal Procedure Committee commenced consultation on tribunal procedure rules for the First-tier Tax Chamber and the rules for tax in the Upper Tribunal on 20 August 2008: the consultation closed on 12 November.

7.2 HMRC administrative changes, including internal review

- 7.2.1 HMRC’s administration of appeals against tax decisions reflects developments over time, differences in the structures of the taxes concerned and the different approaches of the two former departments, the Inland Revenue and HM Customs and Excise. Since the merger of these Departments HMRC has been working to align and modernise the administration of appeals where it is sensible to do so.
- 7.2.2 Against this background, HMRC published a consultation document “HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC” on 9 October 2007. The consultation sought views on implementing a more consistent approach to internal review across HMRC, possible alignments of administrative matters and transitional arrangements.
- 7.2.3 Consultation responses overwhelmingly supported the introduction of an optional statutory review process which enables taxpayers to choose whether or not to have an internal review of disputes.
- 7.2.4 HMRC published a response document “HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC: Summary of Responses and Future Direction” on 12 March 2008. In the document the Government announced the introduction of the optional statutory review process and also that the

Government would streamline appeals handling and proceed with other proposals set out in the consultation document.

- 7.2.5 The adoption of a common policy on review across HMRC's tax business is intended to provide clearer safeguards for taxpayers who dispute HMRC decisions and to help ensure the tribunal is not burdened by cases which could have been resolved by review. Important benefits include:
- making HMRC action in reviewing decisions more transparent for taxpayers;
 - helping assure quality and consistency in HMRC decision making;
 - helping ensure that as many disputes as possible are resolved informally, without the expense or anxiety of a hearing;
 - helping achieve the HMRC aspiration to improve communication and to be more open in its dealings with taxpayers.
- 7.2.6 Section 124 of FA 2008 enables the implementation of review and other changes to be made in a statutory instrument which will also contain changes made under powers in the TCEA.
- 7.2.7 Subject to Parliamentary approval it is expected that tax appeals will transfer into the new tribunal structure on 1 April 2009.
- 7.2.8 Further details of the proposed legislative changes are annexed to the memorandum.

8. Consultation outcome

- 8.1 An early draft of this Order was published on 02 June 2008 with an accompanying Technical Document. The draft contained changes to the Taxes Management Act 1970 as the model for changes to direct tax provisions and changes to FA 1994 and VATA 1994 as the model for indirect tax changes. Paragraphs 2.7 and 2.8 of the Technical Document made it clear that these changes would be applied to the other direct and indirect tax regimes and invited comment on this basis.
- 8.2 To coincide with the publication of the draft Order HMRC has published a separate document "HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC: Summary of Technical Responses" summarising the comments made and responding to them. This document is available from the HMRC website.
- 8.3 Six written responses were received and 3 meetings held with attendees from 18 representative bodies and professional firms. In addition, some of the issues raised were discussed at the MoJ's Tax Appeals Modernisation Stakeholder Group.
- 8.4 Most of the comments related to the proposed review process. Responses again welcomed the statutory but optional approach adopted and concentrated on ensuring that review was robust and in particular that it contained sufficient legislative safeguards.
- 8.5 In response to this, the revised review provisions contain additional safeguards: these include extending appeal time limits where HMRC notify review conclusions later than intended; the provision of reasons for HMRC's review conclusions; and for review to apply in relation to all appealable matters. (Paragraphs 3.12 to 3.49 of the summary of technical responses refer.)
- 8.6 There were also a number of different views on how best to distinguish between the two stages of the direct tax appeal process, in particular how to cater for the stage at which the appeal is being considered by HMRC but is not within the jurisdiction of the tribunal.

- 8.7 Reflecting the different comments on the direct tax process, and the considerable practical impact that any significant change would have on customers, the Government concluded that there should continue to be a single appeal process, but one which operates in two distinct stages. The first stage being for the taxpayer to notify HMRC of an appeal (as now) and the second (where necessary) being for the taxpayer to notify the appeal to the tribunal. (Paragraphs 3.1 – 3.11 of the summary of technical responses refer.)

9. Guidance

HMRC guidance products, for both staff and customers, are in preparation and will be available, as needed, before 1 April 2009.

10. Impact

Full impact assessments of the effect that this instrument will have on the costs of business and the voluntary sector are available from both the HMRC and Ministry of Justice websites and these are attached to this Memorandum, which is available alongside the instrument on the OPSI website.

11. Regulating small business

- 11.1 The changes apply to small business.
- 11.2 The General Commissioners hear cases very locally, at over 400 locations, and this will end with the abolition of the GCITs. Some small businesses may need to travel further to attend a hearing, and to minimise this impact video conferencing and local hires of venues will be used where appropriate. There will be around 130 Tribunal Service venues across the UK, which gives reasonable geographical coverage, and a more consistent standard of accommodation with suitable facilities for people with special needs (many of the current locations are not easily accessible). In addition, the new default paper track for relatively straightforward appeals will mean that attendance is not required in many cases (although parties will have a right to a hearing if they wish). The new tax appeals system should be of benefit to business in the longer term.
- 11.3 The introduction of optional statutory review in HMRC is expected to produce benefits for small businesses in cases where review avoids the need for litigation. As the review and appeals processes provide safeguards for customers, it would be wrong to exclude small firms. Representative bodies and agents of small firms were invited to take part in the HMRC consultation on review. Agents said they would recommend use of the review process to small firms and expected them to benefit.

12. Monitoring and review

Implementation will be closely monitored. An initial assessment of the HMRC data will be carried out by the end of year two. MoJ expect to assess data gathered after the first year of operation.

13. Contacts

Eileen Rafferty at HM Revenue & Customs can answer any queries regarding the HMRC administrative changes arising from the instrument.

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Bryan Pay at the Tribunals Service, Ministry of Justice can answer any queries regarding the transfer of tax tribunal functions into the new tribunal structure.

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GENERAL

Overview of the draft Order

The draft seeks to achieve the following:

- To abolish the existing tribunals and to transfer their functions and the judiciary of the VAT & Duties tribunals, Special Commissioners and section 704/706 tribunals to the new tribunals.
- To make related consequential changes, including a large number of amendments to references to existing tribunals. References to existing tribunals are, in most cases, replaced with “tribunal”, which is defined as meaning the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.
- To omit matters from tax legislation that are appropriate for Tribunal Procedure Rules. In the new system the procedure and practice of the new tribunals is to be set out in rules made by the Tribunal Procedure Committee.
- To provide for review of appealable decisions in the following regimes: aggregates levy, capital gains tax, child trust fund (tax appeals), climate change levy, the construction industry scheme, corporation tax, customs duties, excise duties, income tax, inheritance tax, insurance premium tax, landfill tax, decisions associated with money laundering provisions, National Insurance Contributions, PAYE, petroleum revenue tax, certain stamp duty penalties, stamp duty reserve tax, stamp duty land tax, statutory payments, student loans, and VAT.
- To make other consequential and associated changes.
- To implement the Government’s proposals;
 - To replace the ability of the VAT and Duties Tribunals to decide the rate at which interest will be paid with a right to interest at the statutory rate;
 - To make express provision for the payment and repayment of tax in line with tribunal decisions and court judgments; and
 - To repeal section 84(2) of the VAT Act 1994 (VATA) and related provisions.
- To remove what would in the new First-tier Tribunal be a duplicate step in the procedures for challenging action taken by HMRC under section 703 of the Income and Corporation Taxes Act 1988 (ICTA) or Chapter I of Part 13 of the Income Tax Act 2007 (ITA).
- To clarify the circumstances within which HMRC will conduct reviews of restoration decisions under the existing mandatory review process when they are requested late and to allow the tribunal to consider a refusal by HMRC to conduct such reviews.
- To set out transitional provisions for existing appeals rights and current cases that are before any of the existing tribunals at the time of the commencement of the new system and which transfer into the new system.
- To amend two pieces of legislation as a consequence of the transfer of two non-tax tribunals (the Social Security Appeal Tribunals and the Care Standards Tribunal) to the new tribunal. The amendments, to the Health and Social Care Act 2008 and to Schedule 3A of the Social Security Administration Act 1992, redirect appeal rights to the First-tier Tribunal and Upper Tribunal.

NOTES ON DETAIL

Note: this annexe does not generally include comments on straightforward consequential changes.

ARTICLE 1 – Citation and commencement

This article sets out the name of the Order and provides for it to come into force on 1 April 2009.

ARTICLE 2 – The existing tribunals

This article lists the existing tax tribunals. The term “existing tribunals” in this Order means those listed tribunals.

ARTICLE 3 – Transfer of functions, consequential and other amendments

This article explains that Schedules 1 and 2 contain amendments to primary and secondary legislation respectively. The amendments transfer functions of existing tribunals and make consequential and other provision (including provision for reviews of HMRC decisions).

ARTICLE 4 – Abolition of existing tribunals

This article provides that the existing tribunals (apart from the Commissioners for the general purposes of the income tax) are abolished. The TCEA 2007 provides (in Schedule 23 Part 1) for the abolition of the General Commissioners from a date to be appointed. The Tribunals, Courts and Enforcement Act 2007 (Commencement No. 6 and Transitional Provisions) Order 2008 (SI 2696/2008) was laid on 15 October 2008, abolishing the General Commissioners from 1 April 2009.

ARTICLE 5 –Transfer of members of existing tribunals

This article provides that persons who, immediately before this order comes into force, held specified offices in the existing tribunals will hold specified offices in the new tribunal (apart from the Commissioners for the general purposes of the income tax).

ARTICLE 6 – Transitionals and savings

Schedule 3 contains additional transitional and saving provisions.

SCHEDULE 1

Consequential amendments and supplemental provisions - primary legislation.

Stamp Act 1891

The amendments to the Stamp Act largely involve replacing references to the Special Commissioners with references to the tribunal, and to provide that the Upper Tribunal is the body which will hear further appeals against decisions of the First-tier Tribunal. A definition of tribunal is inserted in section 122 (definitions).

The amendment to section 13A(7) and new (7A) provide a right to appeal to the Upper Tribunal against the tribunal determination on *the amount of* the penalty. Sections 11 and 12 of the TCEA provide a right of appeal against tribunal decisions with permission and on a point of law. This amendment additionally retains the right to ask the tribunal to revisit the amount of the penalty and so preserves the full extent of the existing appeal right. A number of penalty appeals in other regimes have similar provision and have been amended to the same effect (see the Taxes Management Act 1970 (TMA) s 100C(4) and the Inheritance Tax Act 1984 (IHTA) s 249(3) for example). These are not itemised further in this annex.

Taxes Management Act 1970

A significant number of changes are made to replace references to the General and Special Commissioners with references to the tribunal and to make consequential changes.

Consequential changes to this Act include, in particular, the removal of tribunal procedural provisions from Part V. Procedural provisions for the tribunals established under the TCEA 2007 are to be found in the TCEA or orders to be made under that Act, including Tribunal Procedure Rules. The effect of the consequential changes is largely self-evident and unless they raise points of particular interest they are not itemised in this annex.

Sections 4, 4A, 5, and 6(1) and (5) are omitted. These sections establish the Commissioners for the special purposes of the Income Tax Acts” (Special Commissioners) and deputy Special Commissioners, and make related provision. Omitting these provisions reflects their abolition. The General Commissioners are abolished under the TCEA from 1 April 2009.

Sections 28A(5) and 28B(6) are amended to provide that Part 5 of TMA will apply to such applications, to the extent appropriate in context of section 48(2)(b). This attracts relevant administrative provisions, including section 54 (settlement of appeals by agreement) but not the review provisions in sections 49A-49I. Changes to the same effect will be made to other applications and similar provisions: unless these raise additional points of interest they are not itemised in this annex.

Section 31(2) is amended to provide that appeals against amendments to self-assessments (made while an enquiry is in progress to prevent loss of tax) may not be notified to the tribunal before the completion of the enquiry. In addition taxpayers may not require a review, and HMRC may not offer one, before the enquiry is completed. This reflects the existing subsection (2) which provides that any appeal against such a decision may not be heard and determined before the enquiry is completed.

Section 31A(6) is omitted as it concerns tribunal procedure matters, which are appropriate to Tribunal Procedure Rules. A considerable number of identical or similar provisions are found elsewhere in tax legislation and have been omitted or amended to the same effect. For example, the words “hear and” have been omitted from section 33A(7) and other similar provisions as the conduct of an appeal which has been notified to the tribunal is for Tribunal Procedure Rules; and the changes to section 100C(2) remove tribunal procedural provisions while retaining the right of the person liable to the penalty to be a party to any proceedings.

Part V of TMA is amended to remove tribunal procedural provisions and make other changes consequent on the transfer of functions. In addition new sections 49A – 49I provide for review and a number of changes are made to HMRC appeals administrative provisions.

The title of this Part is changed to refer to reviews as well as appeals.

New section 47C defines ‘tribunal’ for the purposes of TMA.

Section 48(2)(b) is amended to reflect the revisions to sections 28A(5) and 28B(6) and similar provisions. Section 48(2)(a) provides that the provisions of Part V, suitably modified, apply to appeals under the Taxes Acts as they apply to appeals against assessments. The Part V provisions – including review – apply to all appeals against decisions on Income Tax, Corporation Tax and Capital Gains Tax. The revised section (2)(b) has the effect that Part V provisions (excluding review) apply to proceedings before the tribunal which are not appeals – such as referrals under section 28A and 28B.

Section 49 is revised to clarify that HMRC, when considering initial applications for a late appeal, are to consider whether there is a reasonable excuse for the lateness.

If HMRC are satisfied that there is a reasonable excuse they must accept the late appeal. If not, they must inform the applicant in writing. It is then open to the applicant to ask the tribunal for permission to make a late appeal, and to the tribunal to give permission.

Review

Section 49A (Appeal: HMRC review or determination by tribunal)

This section enables an appellant to require HMRC to carry out a review or alternatively to notify an appeal to the tribunal once notice has been given to HMRC of an appeal. If a review has not been requested and the tribunal has not been notified of an appeal HMRC may offer review.

Section 49B (Appellant requires review by HMRC)

That section provides that, within 30 days of receipt of a notification requiring review (or any reasonable longer period) HMRC must notify the appellant of their view of the matter in question (subsection (2)). They must then complete a review of the matter (subsection (3)). The requirement to notify a view of the matter prior to review reflects the possibility that negotiation and discussion may have taken place since the original appeal notification. HMRC’s view in such cases will summarise the current position as they understand it, including any points which are considered to have been resolved. If there has been no change of view then the notification will simply say so.

Appellants may not require a review, and HMRC are not obliged to conduct one, if the appellant has received an offer of review from HMRC or notified the tribunal of their appeal (subsections (4)(b) and (c)). There can be only one review of the same matter.

(The time limit within which HMRC must complete reviews is set out in section 43E(6) and (7)).

Section 49C (HMRC offer review)

This section provides that when HMRC notify an offer of review, they must also notify the appellant of their view of the matter in question (subsection (2)).

HMRC may not offer review if a review of the same matter has already been offered or required or the appeal has been notified to the tribunal (subsection (7)).

Where HMRC have offered review the appellant may accept the offer within 30 days (subsection (8)). If the appellant takes no action in response to the offer, HMRC’s view of the matter in question will be treated as if it were contained in an agreement for settlement under section 54(1) and the appeal will be settled on that basis.

Section 49D (Notifying appeal to the tribunal)

This section provides that, where an appeal has been made by giving notice to HMRC, the appellant may notify the appeal to the tribunal (subsections (1) and (2)).

Where an appellant notifies the tribunal of an appeal the tribunal is to decide the matter in question. The rules relating to the manner and method of notifying the tribunal are a matter for Tribunal Procedure Rules.

If the appellant has accepted an offer of review from HMRC or (in a case where the appellant required HMRC to review the matter) HMRC have notified their view of the matter in question under section 49B, the appellant may not notify an appeal to the tribunal until the review period has elapsed (see, in particular, section 49G).

Section 49E (Nature of review, etc)

This section provides for cases where HMRC are required to review the matter under appeal. In such cases the nature and extent of the review are to be such as appear to HMRC to be appropriate under the circumstances (subsection (2)). HMRC must, in particular, have regard to steps taken before the start of the review to decide the matter in question or to resolve any disagreement (subsection (3)).

The review must take account of any representations made by the appellant at a stage which gives HMRC a reasonable opportunity to consider them (subsection (4)).

The review may conclude that HMRC's view of the matter in question is to be upheld, varied or cancelled (subsection (5)). HMRC must give notice of the review conclusions within 45 days or any other period which is agreed (subsections (6) and (7)).

Where HMRC do not give notice of the review conclusions within this period the conclusion is treated as being that HMRC's view of the matter is upheld (subsection (8)) and HMRC must notify the appellant of this (subsection (9)). This provision finalises the review in such cases, ensuring that the taxpayer may notify their appeal to the tribunal once that period of time has passed, and providing a basis on which to do so. See sections 49F and 49G for the effect of the review conclusion and the time limit for notifying an appeal to the tribunal in such cases.

Section 49F (Effect of conclusions of review)

This section provides that the conclusions as notified under section 49E are to be treated as if they were an agreement in writing under section 54(1) for settlement of the matter in question (subsection (2)). The appellant may not repudiate or resile from the agreement under section 54(2) (subsection (3)).

But if the appellant notifies the appeal to the tribunal under section 49G or 49H then subsection (2) does not apply (subsection (4)).

Section 49G (Notifying appeal to tribunal after review concluded)

This section provides that, where HMRC have given notice of the review conclusions it is open to the appellant to notify the appeal to the tribunal. They must do so within 30 days of the date of the document in which HMRC give notice of the conclusions of the review (the post-review period). If the review time limit elapses without the conclusions being notified, the appellant may notify the appeal to the tribunal at any time from the end of the review time limit until 30 days after being notified under section 49E(9) (subsection (5)(b)).

Section 49H (Notifying appeal to tribunal after review offered but not accepted)

This section provides that, in cases where a review is offered and the appellant has not accepted the offer, it is open to the appellant to notify the appeal to the tribunal within the review offer acceptance period (as defined in section 49C(8)). If the acceptance period has ended the appellant may ask the tribunal for permission to notify late.

Section 49I (Other interpretation)

This section defines terms used in sections 49A to 49H.

Amendments to section 50 are largely consequential. New subsections (10) and (11) restate the provisions of section 46(2).

Section 55 is amended consequentially to update references to the tribunals and other terms.

In addition a new subsection (3) is substituted for the existing subsection. This makes clear that applications to postpone payment of tax under appeal should be made to HMRC within 30 days of the date specified. If HMRC and the appellant do not reach agreement the appellant may then refer the matter to the tribunal for a determination on the point. They must do this within 30 days of the date of the document notifying HMRC's decision on the amount to be postponed. Amendment is made to (4) to ensure that the new procedure also applies in cases where a revised determination is appropriate in consequence of a change of circumstance.

The provisions of the current subsection (6A) are spent and have been omitted. The new material in the revised subsection provides that the tribunal's determination on any postponement application made to them is final, notwithstanding the provisions of sections 11 and 13 of the TCEA.

Section 56 provides for payment of tax when there is a further appeal. This restates the provisions of section 56(9) and section 56A (8) and (9). Provisions in sections 56 which relate to tribunal procedures are omitted and section 56A is omitted also.

Oil Taxation Act 1975

This Act is consequentially amended so that references to the existing tax tribunals are replaced and cross-references to repealed or amended TMA provisions are revised.

In addition, new paragraphs 14A-14I of Schedule 2 provide for review of Petroleum Revenue Tax (PRT) decisions. The review provisions are modelled on TMA provisions as outlined in sections 49A to 49I of TMA, with necessary modifications to reflect particular features and terminology of the PRT regime.

Changes have been made to other PRT legislation to provide for review of relevant decisions and reflect the transfer of functions to the new tribunals. The relevant provisions are FA 1980 Schedule 17; FA 1982 Schedules 18 & 19; Oil Taxation Act 1983 Schedule 4; FA 1984 sections 115 and 116; FA 1987 sections 62-66 and Schedules 12 and 14; FA 1993 section 187 and Schedule 21; FA 1994 Schedule 22; FA 2008 Schedule 33; and the Oil Taxation (Gas Banking Schemes) Regulations 1982.

Inheritance Tax Act 1984

This Act is consequentially amended so that references to the existing tax tribunals are replaced and cross-references to repealed or amended TMA provisions are revised.

In addition, new sections 222A-222I provide for review of Inheritance Tax decisions. The review provisions are modelled on the provisions in sections 49A to 49I, with necessary modifications to reflect particular features and terminology of the inheritance tax regime.

Income and Corporation Taxes Act 1988

This Act is consequentially amended so that references to the existing tax tribunals are replaced and cross-references to repealed or amended TMA provisions are revised.

In addition a more substantive consequential change is made to sections 703-6.

Sections 703 and 705 are amended to reflect the transfer of functions to the new tribunals. In addition sections 705(2) and (3), 705A, 706B and 706 are omitted. These provided for parties to require a re-determination of decisions of the Special Commissioners by a tribunal with special expertise in financial or commercial matters constituted under section 706. As the functions of both the 706 tribunal and the Special Commissioners are transferring to the new tribunal, this step (if retained) would no longer involve referral to a separate tribunal. The new tribunals will have the flexibility to constitute panels with this kind of specialist expertise, and onward appeals are provided for in TCEA section 11 and so the additional referral process is no longer necessary.

Schedule 28, para 19 is amended to clarify that postponement applications must be made to HMRC in the first instance. If HMRC and the applicant cannot agree then there is a right to refer the matter to the tribunal. This mirrors the changes to TMA section 55.

Finance Act 1994

This Act is consequentially amended to reflect the transfer of tribunal functions and related changes.

Changes to Part 1 of this Act update appeals provisions for customs and excise decisions to reflect the transfer of tribunal functions, and additionally provide for review of appealable decisions.

The current legislation provides that taxpayers may require review of specified decisions, and may subsequently appeal the review decisions. It is not open to the recipient of a decision to appeal directly to the tribunal without first asking for an HMRC review.

The changes provide for an optional review process for appealable HMRC decisions, while retaining the effect of the existing provisions for restoration decisions and for decisions linked to restoration matters (where a review of a restoration decision has been required). An additional change clarifies the circumstances within which HMRC may undertake late reviews of restoration decisions and gives the tribunal jurisdiction to consider any refusal to allow such a late review.

Section 13A (meaning of “relevant decision”) defines the term “relevant decision” as including all appealable decisions for customs, excise and air passenger duty, except for decisions under 152(b) of the Customs and Excise Management Act 1979 as to whether or not anything forfeited or seized under the customs or excise Acts is to be restored, or the conditions for such restoration (restoration decisions).

Section 14 (requirement for a review of decision under section 152(b) of the Management Act etc) is amended to provide for review only of restoration decisions and decisions linked by their subject matter to restoration decisions.

Recipients of such decisions and other affected parties may require HMRC to review them (subsection (2)).

But persons may require review of linked decisions under this section only if HMRC are also required to review the restoration decision to which it is linked (subsection (2A)).

Subsections (6) and (7) have been omitted from section 14 and restated in section 16 as subsections (11) and (12). These provisions give vires for regulations setting out additional decisions which may be reviewed (and consequently appealed) under section 15. As restated they will provide for sections 13A to 16 to apply to such decisions as they apply to relevant decisions or the decisions referred to in section 14.

Statutory Instruments already made under subsections (6) and (7) will continue to function as before by virtue of section 17(2) of the Interpretation Act 1978.

Section 15 (review procedure) is consequentially amended.

Sections 15A to 15I provide for review of relevant decisions (as defined in 13A). This term includes decisions linked to restoration decisions if no review is required of the restoration decision under section 14.

The process and time limits for offering, accepting and requiring a review under sections 15A to 15I and any subsequent appeal are the same for all taxes formerly within the jurisdiction of the VAT & Duties tribunals and will be set out in full in relation to the provisions in sections 83A to 83G of VATA.

Section 16 (appeals to a tribunal) is amended to provide for the revised set of circumstances in which appeals may be made to the tribunal, reflecting the changes to the provisions about review.

Appeals against section 15 review decisions may be made within 30 days of the date of the document containing the relevant decision (subsection (1)). In cases where there is a deemed confirmation under section 15(2), an appeal may be made within the period of 75 days beginning with the date on which the review was required (subsection (1A)). These provisions replace Rule 4 of the Value Added Tax Tribunals Rules 1986 (SI 1986/590).

Appeals against decisions other than those falling within section 15 may be made within 30 days of the document containing the decision to which the appeal relates in cases where the appellant is the recipient of the decision. Where someone other than the recipient of the decision has a right to appeal that decision, the time limit for appealing is 30 days from the date when that person became aware of the decision (subsection (1B)).

In a case where HMRC are required to undertake a review under section 15C an appeal may not be made until the review conclusion date, and an appeal is to be made within 30 days of the review conclusion date (subsection (1C)).

In a case where HMRC are requested to undertake a review under section 15E (Review out of time) an appeal may not be made unless HMRC have decided whether or not to undertake a review. If HMRC decide to undertake a review an appeal may not be made until the conclusion date. In such cases any appeal is to be made within 30 days beginning with the conclusion date (if HMRC decide to undertake a review) or the date on which HMRC decide not to undertake a review (subsection (1D)).

In any case where HMRC do not give notice of the review conclusion within the specified time an appeal may be made at any time beginning with the end of the review period specified in, or agreed under, section 15F(6) until 30 days after the review conclusion date (subsection (1F)).

An appeal may only be made after the end of the periods specified in subsections (1A) to (1E) if the tribunal gives permission to do so (subsections (1F) and (1G)).

Subsection (2) is amended to provide that only the person who required a review under section 15 may appeal under subsections (1) and (1A). New subsection (2A) makes provision in respect of persons who have appeal rights under section 16(1B).

New subsection (2A) sets out the persons who have a right of appeal under subsection (1B). This provision mirrors section 14(2) for decisions which as a result of this Order no longer fall within the mandatory review regime.

Subsection (3) is amended to provide that appeals relating to relevant decisions falling within section 13A(a) to (h) shall not be entertained unless the disputed amounts had been paid. This removes the existing requirement to pay all outstanding amounts, in addition to the sums in dispute.

Subsections (11) and (12) restate the effect of the current section 14(6) and (7) with consequential modification.

Part 3 of Finance Act 1994 provides for Insurance Premium Tax (IPT). Sections 59-61 (Review and appeal) are amended to remove the existing mandatory review provision and provide for an optional statutory review of all appealable IPT decisions.

Section 60(3) is omitted to remove the requirement to have made all the returns required under the Act and paid all the amounts shown as payable on those returns in order for an appeal to be entertained. This requirement mirrors the change to section 16(3) above.

Section 60(4) is amended to clarify that applications for hardship are to be made to HMRC in the first instance: if agreement cannot be reached the appellant may ask the tribunal for a determination of that issue.

Sections 60(6) to (8) are amended to remove the power of the tribunal to decide the rate at which interest is payable on any amounts found to have been over- or underpaid on determination of the appeal and provide instead that interest will be payable at the normal statutory rates.

Section 60(10) is updated to refer to VATA section 85 and to apply the provisions of VATA section 85B (payment of tax where there is a further appeal) to IPT appeals, subject to appropriate modifications.

Schedule 6 (air passenger duty collection and enforcement) is amended to remove the requirement to have made all the returns required under the Act in order for an appeal to be entertained (paragraph 6). In addition amendments to paragraph 8 remove the power of the tribunal to decide the rate at which interest is payable on any amounts found to have been over- or underpaid on determination of the appeal and provide instead that interest will be payable at the normal statutory rates.

Value Added Tax Act 1994

Part V of VATA is amended to reflect the transfer of functions to the new tribunals. References are updated and provisions which have been overtaken are repealed. In addition, provision is made for review of appealable decisions, and some additional administrative changes have been made.

Section 83A (Offer of review)

This section provides that HMRC must offer reviews of decisions which are appealable under section 83 when the decision is notified to a person (P). The section does not apply to the notification of the conclusions of a review.

Section 83B (Right to require review)

This section provides that any person (other than P) who has a right of appeal under section 83 against an HMRC decision may require a review or serve notice of appeal within 30 days

of the date when that person becomes aware of the HMRC decision. Case law has determined that any person with sufficient interest in a VAT decision (such as the recipient of the supply in question) has the right to appeal that decision. This section provides for these parties to require a review and clarifies the process for doing so.

Section 83C (Review by HMRC)

This section provides that HMRC must review a decision if they have offered review under section 83A and the offer has been accepted within 30 days, and also when a review has been required under section 83B. HMRC are not required to review decisions where P, or another person, has appealed to the tribunal under section 83G: they are not required to conduct a review requested by someone other than the recipient of the decision if the recipient has accepted the offer of review.

Section 83D (Extensions of time)

This section provides for HMRC to notify an extension of time to appeal or ask for review if they are asked to do so within the review offer acceptance period (set out in section 83C(1)(b)) or the 30 day period provided for in section 83B. In such cases, the 30 day time limit for appealing or asking for review begins again on the date of the notice or from a date set out in the notice or a further notice. This section replaces the effect of SI 1986/590 Rule 4(2) for appeals (but by reference to a 30 day, rather than a 21 day, period) and extends the provision to cover reviews.

Section 83E (Review out of time)

This section provides that HMRC must review a decision after the review acceptance period or the period in section 83B if they are asked to do so and are satisfied that P or the person requiring a review under s 83B had a reasonable excuse for not accepting the offer within the period, and that P or the other person made the request without unreasonable delay after the excuse had ceased to apply.

HMRC are not required to review any matter where an appeal has been made in respect of the decision.

Section 83F (Nature of review etc)

This section provides for the nature and extent of the review. Subsections (1) to (6) mirror the provisions in TMA s 49E.

Where HMRC fail to give notice of the review conclusions within the time set out in (6) or any period subsequently agreed, the decision is to be treated as upheld (subsection (8)) and HMRC must notify the party who accepted the review offer or required review under 83B of this (subsection (9)).

This provision finalises the review in such cases, ensuring that the taxpayer may appeal to the tribunal once that period of time has passed, and provides a basis on which to do so. Section 83G(5) gives the time limit for making an appeal in such cases.

Section 83G (Bringing of appeals)

This section provides a time limit for making an appeal under section 83. Appeals may be made by notifying the tribunal within 30 days of the date of the decision to which the appeal relates or, in cases where a person other than the recipient of the decision is the appellant, within 30 days of the date when that person became aware of the decision. Where the time limit for appeal has been extended under section 83D an appeal may be made within the period provided for under that section (subsection (1)).

In cases where HMRC are required to undertake a review, an appeal may not be made until the conclusion date. In such cases any appeal is to be made within 30 days beginning with the conclusion date (subsection (3)).

In cases where HMRC are asked to undertake a review out of time under section 83E an appeal may not be made until HMRC have decided whether or not to undertake a review. If HMRC decide to undertake a review an appeal may not be made until the conclusion date. In such cases any appeal is to be made within 30 days beginning with the conclusion date. If HMRC decide not to undertake a review an appeal may be made from the date on which HMRC so decide (subsection (4)). The conclusion date is the date of the document notifying HMRC's conclusions (subsection (7)).

If HMRC do not notify their conclusions within the review time limit, the time limit for appealing starts at the end of the review time limit and ends 30 days after the conclusion date (subsection (5)).

An appeal may be made after the end of the period specified in subsection (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so (subsection (6)).

Section 84 (further provisions relating to appeals) is consequentially amended to reflect the new tribunal structures and related changes.

Subsection (2) is omitted to remove the requirement to have made all the returns required under the Act and paid all the amounts shown as payable on those returns in order for an appeal to be entertained.

Subsections (3B) and (3C) are inserted to provide that applications not to pay amounts subject to appeal on grounds of hardship are made to HMRC in the first instance, and that HMRC may agree such applications if they are satisfied that the applicant would otherwise suffer hardship. If HMRC and the applicant cannot reach agreement on the issue of hardship the applicant may apply to the tribunal for a determination of that issue.

Subsection (8) is omitted and has been restated in revised form in section 85A.

Section 85(1) is amended to remove specific reference to costs. This now mirrors the equivalent provision in TMA (section 54).

New section 85A (Payment of tax on determination of appeal) restates section 84(8) with modifications. The modifications remove the power of the tribunal to decide the rate at which interest is payable on any amounts found to have been over- or underpaid on determination of the appeal and provide instead that interest will be payable at the normal statutory rates.

New section 85B (Payment of tax when there is a further appeal) provides that tax is payable or repayable in line with the tribunal determination notwithstanding any further appeal (subsection (1)).

If the amount payable or repayable is altered by the order or judgment of the Upper Tribunal or court on further appeal, overpaid tax or underpayments of credits shall be refunded with such interest, if any, as the Upper Tribunal or court may allow. Or, if too little tax has been charged or too much credit has been allowed, any amount determined to be due shall be payable at the end of the 30 day period beginning on the date HMRC issue notice of the amount payable (subsection (2)). Subsections (1) and (2) mirror the restated TMA section 56.

Pending determination of the further appeal HMRC may apply for permission to withhold any payment or repayment or to require adequate security before payment or repayment is made if they consider this necessary for the protection of the revenue (subsection (3)). In such cases the tribunal may give permission or require the provision of security.

P may apply to HMRC for permission not to make payments or repayments under subsection (1) pending the determination of the further appeal (subsection (4)).

If HMRC and P do not agree, P may apply to the tribunal or court from which permission or leave to appeal is sought for a determination of the issue (subsection (5)).

In considering an application under subsections (4) or (5) HMRC or the relevant tribunal or court, as appropriate, may

decide how much, if any, of the disputed amount should be paid or repaid; or
require the provision of adequate security; or
stay the requirement to pay or repay under subsection (1) (subsection (6)).

Security shall be of such amount and given in such manner as the tribunal or court may determine (but, in the case of an application under subsection (4), HMRC may agree to accept such security as they consider adequate to protect the revenue) (subsection (9)(a) and (b)). An application under this section is to be made to the tribunal or court from which permission or leave to appeal is sought (subsection (8)).

Finance Act 1996

Sections 54 – 57 (landfill tax: review and appeal) are amended to reflect the transfer of tribunal functions and to replace the current mandatory review provisions with a right to a review. Provision is made for hardship applications to be made to HMRC in the first instance and only referred to the tribunal if the parties do not agree. Interest will be payable at the normal statutory rate on amounts found to be overpaid or underpaid in consequence of appeal determinations. Section 85B of VATA will apply to landfill tax appeals as it does to VAT appeals.

Section 197 is amended to provide that interest will be paid at the statutory rate on amounts due and payable in consequence of tribunal determinations.

Finance Act 1998

Schedule 18 (company tax returns, assessments and related matters) is amended consequentially to reflect the transfer of tribunal functions. The review provisions in TMA 1970 sections 49A to 49I will apply to any appeals made under this Schedule by virtue of TMA sections 48(2).

Finance Act 1999

Schedule 17 (stamp duty: determination of penalty and appeals) is amended to provide for review of stamp duties penalties (other than late stamping penalties which are subject to adjudication under SA 1891) and to make administrative changes to late appeal provisions modelled on the revised TMA 1970 s 49. Paragraph 12 is additionally amended to retain the full scope of the current appeal right.

Finance Act 2000

Schedule 6 (climate change levy: review and appeal) is amended to reflect the transfer of tribunal functions and to replace the current mandatory review provisions with a right to a review (paragraphs 99 and 121 - 123). Interest will be payable at the normal statutory rate on amounts found to be overpaid or underpaid in consequence of appeal determinations. Section 85B of VATA will apply to climate change levy appeals as it does to VAT appeals.

Finance Act 2001

Sections 40-42 (aggregates levy: review and appeal) are amended to reflect the transfer of tribunal functions and to replace the current mandatory review provisions with a right to a review. Interest will be payable at the normal statutory rate on amounts found to be overpaid

or underpaid in consequence of appeal determinations. Section 85B of VATA will apply to aggregates levy appeals as it does to VAT appeals.

Tax Credits Act 2002

The Act is consequentially amended to reflect the transfer of tribunal functions.

Tax credit appeals in England, Wales and Scotland have been transferred into the jurisdiction of the Social Entitlement Chamber on a temporary basis as set out in section 63 and orders made under that section. Appeals against Tax Credits decisions made in Northern Ireland remain with the NI appeal tribunal and Commissioners: this reflects the position for all social entitlement appeals.

The Government has announced that the planned transfer of all UK Tax Credit appeals to the Tax Chamber will take place after initial transfer at a time when the new tribunal structures have bedded down.

Provision for reviews after transfer to the Tax Chamber is made by modifications to sections 19(10) and by the existing section 39(6): both of which have the effect that relevant TMA provisions will apply to such appeals once that transfer is made.

Income Tax (Earnings and Pensions) Act 2003

Consequential changes are made to this Act to reflect the transfer of tribunal functions.

In addition changes are made to provide for review of applications made under section 111 and Schedule 5 paragraphs 48 and 56. ITEPA is within the definition of “Taxes Act” for the purposes of section 48(2) of TMA, and by virtue of this provision review will apply to appeals made under ITEPA provisions.

Finance Act 2003

Consequential changes are made to reflect the transfer of tribunal functions.

Sections 24-37 (taxes and duties on importation and exportation: penalties) are amended to reflect the transfer of tribunal functions. In addition new sections 33A to 33F provide for review of decisions which are appealable under section 33. The provisions mirror those in VATA sections 83A-83G, with the exception of provision for third parties which is not needed for these decisions. Consequential amendments are made to reflect the introduction of statutory review for these decisions.

Schedule 10 (stamp duty land tax: returns, enquiries, assessments and appeals) is amended to provide for review of stamp duty land tax appeals.

Paragraphs 36A-36I are based on sections 49A-I of TMA with appropriate modifications. Paragraph 39 is amended to clarify that postponement applications are made to HMRC in the first instance, and only referred to the tribunal if the parties do not agree.

New paragraphs 41 to 45 restate the provisions of Schedule 17 paragraph 4 to this Act and Regs 21, 22, 25 and 26 to the Stamp Duty Land Tax (SDLT) (Appeals) Regulations 2004 (2004/1363). The Regulations are made by the Lord Chancellor under vires given by FA 2003 s 115 and Schedule 17 and TMA s 56B. Most of the matters provided for in Schedule 17 and in the Regulations are for the MoJ and are or will be provided for in the TCEA or Orders made under it. Paragraph 4 and regulations 21, 22, 25 & 26 contained HMRC provisions and have been restated here with appropriate modifications. The remaining provisions have been overtaken by the TCEA and are accordingly omitted.

Income Tax Act 2007

Consequential changes are made to reflect the transfer of tribunal functions.

In addition sections 706 to 711 are omitted. These provide for parties to require a re-determination of decisions of the Special Commissioners by a tribunal with special expertise in financial or commercial matters constituted under section 704. The new tribunals will have the flexibility to constitute panels with specialist expertise to hear matters such as this, and onward appeals are provided for in section 11 of the TCEA and in consequence the additional referral process is no longer necessary. This change mirrors that made to ICTA 1988 sections 705(2) and (3), 705A and 706B.

SCHEDULE 2

Consequential Amendments and Supplemental Provisions – Secondary Legislation

Stamp Duty Reserve Tax Regulations 1986

Amendments are made to reflect the transfer of tribunal functions.

Amendments are made to the Schedule to these Regulations (which applies appropriate TMA administrative provisions, modified as appropriate, to Stamp Duty Reserve Tax) to provide for review of SDRT appeals.

Social Security Contributions (Decisions and Appeals) Regulations 1999

Amendments are made to reflect the transfer of tribunal functions.

In addition regulation 7 is revised to provide that sections 49A-49I of TMA (review), suitably modified, apply to appeals against decisions made by HMRC under Part II of the Transfer Act or Part II of the Transfer Order. These are decisions on National Insurance Contributions, Statutory Sick Pay and Statutory Maternity Pay

Export (Penalty) Regulations 2003

Amendments are made to reflect the transfer of tribunal functions.

In addition new regulations 9A-9F provide for review of appealable decisions made under these regulations. The provisions mirror those in VATA sections 83A-83G, with the exception of provision for third parties which is not needed for these decisions. Consequential amendments are made to reflect the introduction of statutory review for these decisions.

Similar amendments are made to the following enactments:

Control of Cash (Penalties) Regulations 2007

Money Laundering Regulations 2007

Transfer of Funds (Information on the Payer) Regulations 2007

SCHEDULE 3 – Transitional and saving provisions

Overview

The transitional provisions relate to existing review and appeal rights and current cases before any of the existing tribunals at the commencement date.

These provisions seek to answer the question of what happens to cases which are in progress, and which are potentially affected by the commencement of the new tribunal system and the changes made by this Order, in particular in relation to a) a right of review, b) a right of appeal to an existing tribunal, c) a current review, d) a current appeal, and e) rights of appeal against, and review of, decisions of existing tribunals.

There are particular provisions for indirect tax decisions notified before the commencement date where there was a statutory right of review, to ensure that the review and appeal provisions continue to apply to those decisions as they would have applied before that date.

There are other provisions in relation to direct tax appeals that are with HMRC but not before a tribunal at the point of transition. The new review provisions apply to these appeals, though the standard period for completing a review is 90 days rather than 45 for any review offered or accepted up to 31 March 2010.

Otherwise, there are general provisions to ensure that transitional cases before the tribunal are dealt with in a fair and just way. The tribunal may apply or disapply any provision of the procedural rules in force before the transfer of the cases to the new system. It may disapply any provision of the new Tribunal Procedure Rules. An Order for Costs cannot be made after the commencement date if it could not have been made before then.

Paragraph 1: General

Paragraph 1 defines terms used in the Order. In particular the term “current proceedings” is defined for the purposes of this Schedule as those cases where parties have served notice on an existing tribunal before the commencement date for the purpose of beginning proceedings before the existing tribunal and those proceedings have not ended.

Paragraphs 2 and 3: Former VAT and duties tribunals matters (except VAT)

Paragraphs 2 and 3 provide for reviews and appeals in respect of decisions which before commencement would have been heard by the VAT and duties tribunals, except VAT decisions.

Paragraph 2 provides that, where an HMRC decision which carried a right of review was notified before the commencement date, and the time limit for requesting a review has not expired and no review has yet been requested, the existing review and appeal provisions (set out in sub-paragraph (6)) will continue to apply.

It also provides that where a review decision falling within the provisions in subsection (6) has been notified before commencement and the period for making an appeal has not elapsed and no appeal has yet been made, the existing review and appeal provisions will continue to apply.

Paragraph 3 provides for cases where a review has begun under the provisions in paragraph 2(6) before the commencement date. The existing review and appeal provisions will continue to apply to these cases. No further review will be available under the provisions applying after the commencement date.

Any time limit which has started to run will continue to apply to decisions falling within paragraphs 2 and 3, except that references to the VAT and duties tribunals are to be read as references to the new tribunal.

Paragraph 4: Former VAT and duties tribunals matters: VAT

This paragraph provides for cases where HMRC decisions which carry a right of appeal under VATA section 83 are notified before the commencement date, but no appeal has been made to the existing tribunal.

Any time limit which has started to run shall continue to apply and relevant provisions (set out in sub paragraph (2)) will continue to apply, subject to Tribunal Procedure Rules. Review will not be available for these decisions.

Paragraph 5: Matters formerly heard by existing tribunals (except VAT and duties tribunals)

This paragraph applies to direct tax appeals notified to HMRC before the commencement date and which have not been notified to an existing tribunal by that date.

Where the date on which a review is required or offered falls on or before 31 March 2010, the period for completing a review shall be 90 days (unless a different period is agreed).

Paragraphs 6 and 7: Current proceedings

Any current proceedings are to continue on and after the commencement date as proceedings before the tribunal. In dealing with such cases the tribunal may give any direction required to ensure that matters are dealt with fairly and justly, including applying any procedural rule which was in force before the commencement date or disapplying any provision of the Tribunal Procedure Rules.

Where a hearing (other than a hearing before the General Commissioners) began before the commencement date, the tribunal continuing to hear the case after that date must be comprised of the same panel member(s) (subparagraph (2)). Hearings before the General Commissioners are excluded from this provision as, in contrast to members of the other tribunals, the General Commissioners are not being transferred into the new tribunal.

Additionally, for all proceedings continued before the new tribunal:

Any direction or order given in proceedings and which is in force before the commencement date shall continue in force as if it were a direction of the First-tier Tribunal.

A time period which has started to run before the commencement date and has not expired will continue to apply.

An order for costs may only be made if, and to the extent that, an order might have been made before the commencement date.

Paragraph 8: Cases to be remitted by courts

Any case remitted by a court on or after the commencement date in relation to an existing tribunal shall be remitted to the tribunal.

Paragraphs 9 and 10: Decisions of VAT and duties tribunals and courts: interest and payment

Paragraph 9 applies to any decision of a VAT and duties tribunal made before the commencement date. Provisions specified in subsection (2) (payment of amounts due in consequence of the tribunal decision and interest on those payments) will apply as they did before the commencement date.

Paragraph 10 provides that section 85B of VATA (payment of tax on determination of an appeal) does not apply to appeals made from a decision of a VAT and duties tribunal or from a court before the commencement date.

Paragraph 11: Decisions of existing tribunals: rights of appeal, reviews and irregularities

This paragraph provides for a decision of an existing tribunal where, immediately before the commencement date, an appeal lay to a court from that decision, a review has been or may be requested or the tribunal wishes to correct an irregularity.

Subparagraph (2) provides that the appeal rights which apply to decisions of the First-tier Tribunal shall apply to such a decision as if had been made by the First-tier Tribunal on or after the commencement date. This does not apply to General Commissioners' decisions.

Subparagraphs (3) to (6) enable the General Commissioners and clerks to continue to fulfil their obligations under TMA 1970 and the General Commissioners (Jurisdiction and Procedure) Regulations 1994 for the purpose of an application for a case to be stated, review, or correcting irregularities. Any such applications will be dealt with under the existing legal provisions.

Paragraph 12: Existing tribunals – staff

This paragraph provides that staff appointed to an existing tribunal (other than those appointed to the Commissioners for the general purposes of the income tax) before the commencement date will be treated for the purpose of any enactment as if appointed to the new tribunals.

Paragraph 13: Saving provision

This paragraph provides a general saving provision, to the effect that references to existing tribunals and office holders of those tribunals shall be taken as references to the First-tier or the Upper Tribunal or members or officials of those tribunals as appropriate. This does not apply to any reference amended by Schedule 1 or 2.