
HM Revenue and Customs and the Taxpayer

Tax Appeals against decisions made by HMRC

**Technical document
June 2008**



Contents

Chapter		Page
1	Introduction	3
	<i>Social Entitlement Chamber matters</i>	4
2	Overview of the draft Order	6
3	Explanatory Notes	8
	Articles	8
	<i>Citation and commencement</i>	8
	<i>Interpretation</i>	8
	<i>Transfer of functions of certain tribunals</i>	8
	<i>Structure of this Order</i>	8
	<i>Consequential amendments to enactments</i>	8
	<i>Transitional provisions</i>	9
	<i>Revocations and repeals</i>	9
	Schedule 1: Consequential Amendments and Supplemental Provisions	10
	<i>Taxes Management Act 1970</i>	10
	<i>Income and Corporation Taxes Act 1988</i>	16
	<i>Finance Act 1994</i>	16
	<i>Value Added Tax Act 1994</i>	22
	<i>Finance Act 1996</i>	26
	<i>Finance Act 2000</i>	27
	<i>Finance Act 2001</i>	27
	<i>Income Tax Act 2007</i>	28
	Schedule 2: Transitional Provisions	29
	<i>Transitional Provisions</i>	29
	<i>Direct tax appeals</i>	29
	<i>Indirect tax appeals</i>	29

Chapter 1: Introduction

- 1.1 The administration of appeals against HM Revenue and Customs (HMRC) 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. This is linked to the work on taxpayer¹ safeguards that has been carried out by the Review of Powers, Deterrents and Safeguards².
- 1.2 This work on the way appeals are handled by HMRC is also being considered in the context of the reform of the tribunal system which is being taken forward by the Ministry of Justice (MoJ).
- 1.3 The Tribunals Courts and Enforcement Act 2007 (TCEA) provides for a single two-tier tribunal structure. The new tribunal will be sub-divided into Chambers, one of which will be the Taxation Chamber. It is expected that tax appeals will transfer to the Taxation Chamber in April 2009.
- 1.4 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.
- 1.5 The consultation sought views on implementing a more consistent approach to internal review across HMRC, possible alignments of administrative matters and transitional arrangements. The consultation responses overwhelmingly supported the introduction of an optional statutory review process which enabled taxpayers to choose whether or not to have an internal review of disputes.
- 1.6 HMRC published its 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.
- 1.7 In the response document the Government announced that it would introduce a statutory entitlement to review of appealable decisions which would fall within the jurisdiction of the Taxation Chamber of the new tribunal. The new optional process will apply to those matters that currently have a mandatory review (except for disputed restoration decisions under the Customs and Excise Management Act 1979 where the current mandatory review process will remain).

¹ The term taxpayer is used throughout this document to mean businesses and individuals who may be liable to pay tax or duties or are entitled to make claims. It is also intended to cover charities and trusts.

² HMRC and the Taxpayer: Modernising Powers Deterrents and Safeguards (March 2005);
Modernising powers, deterrents and safeguards: The developing programme of work (30 March 2006)
Modernising powers, deterrents and safeguards: Safeguards for taxpayers (17 May 2007)
Modernising powers, deterrents and safeguards: Safeguards for taxpayers; Summary of responses (January 2008)

- 1.8 The document also announced that the Government would streamline appeals handling and proceed with other proposals set out in the consultation document.
- 1.9 The new provisions will apply from the time that the functions of the existing tribunals are transferred to the Taxation Chamber. Most matters are expected to transfer in April 2009.
- 1.10 The MoJ consultation “Transforming Tribunals”, published on 28 November 2007 considered how the new two-tier tribunal and the Taxation Chamber within it should operate. MoJ published its response document on 19 May 2008.
- 1.11 HMRC is working closely with the MoJ to ensure the implementation of the new tribunal structure and HMRC administrative changes fit together, to develop proportionate tribunal rules and procedures and to ensure a safe transition to the new tribunal.
- 1.12 Clause 119 of Finance Bill 2008 enables the implementation of this review and other changes to be made in a Statutory Instrument which will also contain changes made under powers in the TCEA.
- 1.13 This document introduces the draft “The Transfer of Tribunal Functions and Revenue and Customs Appeals Order” and should be read with it. Chapter 2 gives an introduction to the Order and an overview of what it contains. Chapter 3 provides explanatory material and comments on the provisions in the draft Order in more detail.
- 1.14 The draft Order enables readers to see the proposed changes to tax appeals provisions in one place and allows plenty of time for comment before the Order is laid before Parliament in the autumn.
- 1.15 HMRC would be pleased to receive comments and observations on the draft Order and, where desired, to meet with interested parties to discuss the proposed provisions. Please send any comments or observations on the draft Order to reform.appeals@hmrc.gsi.gov.uk or contact Helen Latham on 0207 147 2315 by 25 July.

Social Entitlement Chamber matters

- 1.16 The changes necessary to transfer tax credits, child benefit and Child Trust Fund (non-tax) appeals to the proposed Social Entitlement Chamber will be made separately by the Ministry of Justice, in an Order covering all those matters which will transfer to that Chamber.
- 1.17 These matters are expected to transfer on 3 November 2008.
- 1.18 The intention is that tax credit appeals will, in due course, transfer to the Taxation Chamber of the new tribunal. Provision will be made at

the time of transfer to ensure that the internal review provisions operating in respect of matters heard by the Taxation Chamber will also apply to tax credits.

Chapter 2: Overview of the draft Order

2.1 The current draft of the Order includes:

- the main provisions for review in Part 5 of the Taxes Management Act 1970 (TMA), Part 5 of the Value Added Tax Act 1994 (VATA) and Part 1 of the Finance Act 1994 (FA 1994);
- the main consequential and associated changes, such as the interaction with the appeal provisions; and
- provisions implementing the Government's proposals;
 - to replace the ability of the VAT and Duties Tribunal to decide the rate at which interest will be paid with a right to interest at the statutory rate;
 - to make express provision for payment and repayment of tax in line with tribunal decisions and court judgements; and
 - to repeal section 84(2) of VATA and related provisions.

2.2 In addition, the draft Order:

- removes what will become an unnecessary 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), following discussions with specialists in this area (see paragraphs 3.63 – 3.66 and 3.169);
- clarifies the circumstances within which HMRC will conduct reviews of restoration decisions under the existing mandatory review process when they are requested outside the normal time limit. It also provides a facility for the tribunal to consider refusal by HMRC (see paragraphs 3.76 – 3.79).

2.3 The intention is to lay the Order before Parliament in the autumn and that it will become effective on 1 April 2009.

2.4 To keep legislative change to a minimum and to fit with the existing tax structure the draft Order amends each of the relevant Acts in a way which is tailored to the different needs of each tax.

2.5 The draft Order does not yet contain provisions implementing internal review of HMRC decisions about Stamp Duty Land Tax; Stamp Duty Reserve Tax; Stamp Duty; Petroleum Revenue Tax; PAYE; National Insurance Contributions; Statutory Payments; Child Trust Fund (tax appeals); student loans; Inheritance Tax; Air Passenger Duty; Insurance Premium Tax; Climate Change Levy; Aggregates Levy; Landfill Tax; or Money Laundering. These provisions will be included in the Order before it is laid in the autumn.

- 2.6 The consultation responses agreed that alignment was desirable, but recognised that there are some fundamental differences between taxes. Accordingly, the approach taken is to broadly split tax appeals between those which link into or which mirror the provisions in TMA (described from now on as the direct tax model), and those which mirror the appeals provisions in VATA (described from now on as the indirect tax model).
- 2.7 Readers whose main interest is in taxes which link into TMA but which are not yet covered by the draft Order (such as Stamp Duty Land Tax or Inheritance Tax) should look at the draft amendments to TMA to see the approach intended.
- 2.8 Matters which link into the appeals provisions in VATA, but which are not yet covered by the draft Order (such as Insurance Premium Tax or Climate Change Levy), currently have a mandatory review process which does not apply in VAT itself. These provisions will be repealed, (except in relation to restoration decisions) and a new review process inserted, following the indirect tax model. Readers who are interested in how review would work in these taxes should look at the draft amendments for implementing review in VAT.

Chapter 3: Explanatory Notes

Articles

Citation and commencement

- 3.1 If approved by Parliament, the Order is expected to come into effect on 1 April 2009.
- 3.2 The Order is to be made by the Lord Chancellor under powers conferred by sections 30, 31, and 38 of and paragraph 30 of Schedule 5 to the TCEA and by the Treasury under powers to be conferred following Royal Assent of the Finance Bill 2008 (clause 119).
- 3.3 The Order will therefore encompass both the changes necessary to implement reform of the tribunal in so far as it deals with tax appeals and the linked changes streamlining HMRC appeals processes. In particular it will implement a consistent review process across the taxes.

Interpretation

- 3.4 Article 2 sets out interpretative provisions.

Transfer of functions of certain tribunals

- 3.5 Article 3 provides for the transfer of appeals and other proceedings which are currently heard by the General and Special Commissioners, the Section 706 ICTA 1988 and Section 704 ITA Tribunals and the VAT and Duties Tribunals to the new First-tier and Upper Tribunals.
- 3.6 In addition, it provides that the Special Commissioners, the VAT and duties tribunals and the section 706 ICTA and section 704 ITA tribunals are abolished (the General Commissioners are abolished under TCEA). It also provides that the Chamber president will determine which matters are to be heard in the First-tier Tribunal, and which matters are to be heard in the Upper Tribunal. This will provide for a handful of exceptionally complex cases to be heard initially in the Upper Tribunal, skipping the First-tier Tribunal.

Structure of this Order

- 3.7 Article 4 provides that the provisions of articles 5, 6, and 7 (consequential and supplemental changes, transitional provisions and repeals and revocations) are made in connection with the coming into force of TCEA 2007 and the transfer of functions described in Article 3 (defined as 'the relevant changes').

Consequential amendments to enactments

- 3.8 Article 5 gives effect to Schedule 1 which contains consequential amendments and supplementary provision in connection with the relevant changes.

Transitional provisions

3.9 Article 6 gives effect to Schedule 2, transitional provisions in connection with the relevant changes.

Revocations and repeals

3.10 Article 7 gives effect to Schedule 3, within which Part 1 contains repeals and Part 2 contains revocations.

Schedule 1: Consequential Amendments and Supplemental Provisions

- 3.11 This draft schedule contains many consequential changes, and more will be added before the Order is laid. Many of them are simply directed to replacing references to the existing tax tribunals with references to the new tribunal, and more generally to reflect the provisions of TCEA (which, for example, makes provision about the tribunals themselves and about further appeals). The approach taken is to amend each Act as appropriate, with a provision in paragraph 24 in case any are inadvertently missed.
- 3.12 This document comments explicitly only on significant matters mentioned at paragraphs 2.1 and 2.2 above and in particular on changes to TMA, ICTA, Finance Act 1994 and VATA.
- 3.13 The draft does not yet take account of the provisions of Finance Bill 2008.

Taxes Management Act 1970: (paragraph 1)

Overview of new direct tax review model

- 3.14 In direct taxes the effect of section 31A of TMA will be largely unchanged. If a person disputes a tax assessment or an amendment of a self-assessment, there will continue to be 30 days within which to appeal (subject to late appeal provision in section 49 of TMA). As now, the appeal will be made by notifying HMRC. In addition, as now, once the appeal has been made, HMRC may agree for tax to be postponed under section 55 of TMA and both parties continue to have the opportunity to resolve the appeal by agreement where this is possible.
- 3.15 We are considering suggestions made that the appeal notified to HMRC should in practical terms be referred to as an objection, to help clarify the distinction between this stage and the later stage when the appeal is notified to the tribunal. One possibility, to support that approach, might be to include a provision in legislation to this effect.
- 3.16 Once the appellant has notified HMRC of an appeal, agreement may be reached, as now, under section 54 of TMA. But in the absence of such an agreement appellants may, at any time, on their own initiative either notify the tribunal of the appeal to initiate the hearing process or request a review by HMRC.
- 3.17 Equally, HMRC may notify the appellant of its current view of the matter and offer a review. Once a review has been offered the appellant has 30 days within which to accept the offer or if the appellant does not want a review, to notify the tribunal of the appeal.
- 3.18 If an appellant does neither of these things within the time limit (subject to late review and appeal provisions) the matter is treated as settled

and will become final.

- 3.19 If the appellant requests, or accepts the offer of review, HMRC will conduct it within 45 days unless another period is agreed. Once a review offer is accepted (or a request for review made), the appellant may only notify the tribunal of the appeal once the review is finished, or the 45 days (or other time agreed), has elapsed.
- 3.20 Once the review is completed the appellant has a further 30 days within which to notify the tribunal of the appeal. If the taxpayer does not do this within the time limit (subject to late appeal provisions) the matter is treated as settled in accordance with the conclusion of the review, and becomes final.
- 3.21 If the appellant does not want a review and wishes the matter to go straight to the tribunal, the appellant may send notification to the tribunal at the same time as notifying HMRC of the appeal.
- 3.22 Once the appellant notifies the tribunal of the appeal the tribunal service will become responsible for the administration of the appeal including making arrangements for the hearing.

Reviews: sub-paragraph (19)

- 3.23 This sub-paragraph inserts the new review procedure for direct taxes in Part V of TMA. In particular it inserts a new heading, “Part 5: Reviews and appeals, and other proceedings” and new sections 43D to 43I.
- 3.24 Sections 43D to 43I implement the statutory entitlement to a review of HMRC decisions about income tax, corporation tax and some aspects of corporation tax, and are inserted at the beginning of Part V of TMA.

Section 43D: Offer of Review

- 3.25 Section 43D(1) provides the entitlement to review for all matters for which an appeal has been made and which is capable of further appeal.
- 3.26 This means most appealable matters will be reviewable; the notable exclusions being information powers (such as the ITSA and CTSA provisions in section 19A and paragraph 27 of schedule 18 to Finance Act 1998 – and the proposed new powers in schedule 38 Finance Bill 2008). Other matters which are not reviewable will include any matter considered by the tribunal which is not an appeal, for example, applications, such as applications for postponement.
- 3.27 Under section 43D(1) an appellant (‘A’) may require HMRC to conduct a review by notice. Equally, HMRC may offer a review.
- 3.28 Section 43D(2) provides that if an appellant asks for a review HMRC must, within 30 days of the request, or such longer period as is

reasonable, notify the appellant whether there is any change in its view of the matter.

- 3.29 Section 43D(3) provides that when HMRC offers a review it must notify the appellant whether there is any change in its view of the matter at the same time.
- 3.30 In both subsections (2) and (3) the purpose of HMRC giving this notification is to make sure that the taxpayer knows which points (if any) HMRC agrees and which are still in dispute, and to provide a clear basis for the progression of the review or settlement of the appeal.
- 3.31 Section 43D(4) ensures there can only be one review in respect of any appeal.

Section 43E: Appellant's options

- 3.32 This section sets out the appellant's options if HMRC offer review. Section 43E(1) provides that on receipt of the offer of review the appellant may either accept the offer or notify the tribunal of the appeal (implicitly rejecting it). Section 43E(2) provides a 30 day time limit for this.
- 3.33 Under the new process it is the appellant taxpayer (rather than HMRC - as is usually the case at present) who must bring the appeal to the attention of the tribunal. This ensures that the taxpayer keeps control of the process and helps provide clear and visible separation between the tribunal and HMRC.
- 3.34 Since the appeal can only be notified to the tribunal by the appellant, the legislation needs to cater for circumstances in which the taxpayer does not take any action. The legislation therefore provides (subject to late appeal provisions in section 43H(5)) explicitly that inaction will be treated as agreement. This is comparable to the position where an assessment is made and the taxpayer does not appeal.
- 3.35 Accordingly, the remaining provisions of section 43E provide that if the appellant neither accepts the offer of review nor notifies the tribunal within the 30 days, the matter is treated as settled under section 54(1) TMA.
- 3.36 There is already provision in section 118(2) TMA for HMRC to accept an out of time review acceptance if there is a reasonable excuse for not having accepted within the time given. If HMRC do not accept that there is a reasonable excuse, the appellant may apply to the tribunal for leave to appeal outside of the time limit under section 43H(5).

Section 43F: Conduct of review

- 3.37 This section provides rules relating to the conduct of a review. In particular the review must be conducted within 45 days unless another period is agreed.

3.38 Section 43F(1) provides that HMRC must notify the conclusion of the review within the 45 days (or other agreed period) from the date HMRC notify the appellant of its view under section 43D(2)(a) or the date the appellant accepts the offer of review (under section 43E(2)). Under section 43H(1)(b) the appellant may notify the tribunal of his appeal within 30 days of the date of the document notifying HMRC's review conclusions.

3.39 If HMRC does not notify the outcome of the review within the relevant period, subsection (3) provides that (if no further period is agreed)

- HMRC's view of the matter as notified under 43D(2)(a) or (3) is treated as upheld; and
- that view shall be treated as the conclusion of the review for the purpose of section 43G(2) to (4).

Under 43H(1)(c) the appellant may notify the tribunal of his appeal within 30 days from the end of the relevant period.

3.40 Section 43F(2) makes clear that the nature and extent of the review may vary depending on the nature of the case. It therefore meets concerns expressed during the consultation that 'one size does not fit all'.

3.41 It specifies, in particular that the nature and extent of the review may take into account steps taken in reaching their view of the matter or to resolve disagreement about it. For example the matter may already have been subject to a great deal of internal scrutiny by people other than the decision maker and possibly the subject of legal advice either before or after the decision under appeal was made.

Section 43G: Conclusion of review

3.42 This section provides that the review may conclude that HMRC's view of the matter notified under section 43D(2)(a) or (3) is upheld, varied or cancelled. It also provides the legislative route for settling the appeal following review.

3.43 Section 43G(1) provides that the review may conclude that HMRC's view of the matter notified under section 43D(2)(a) or (3) is upheld, varied or cancelled.

3.44 Section 43G(2) provides that the review conclusion notified under section 43F(1) or, where section 43F(3) applies, the deemed conclusion, is to be treated as an agreement issued under section 54(1) TMA unless the taxpayer brings the matter to the notice of the tribunal within the time limit specified in section 43H(1)(b) or (c) as appropriate (30 days). As with agreements under section 54, the review conclusion will be treated as final.

- 3.45 Section 43G(3) provides that section 54(2) TMA (which gives the appellant 30 days within which to resile from the agreement) does not apply. This is appropriate since the way to indicate that the appellant does not agree is to bring the matter before the tribunal, and the same 30 day time limit applies.

Section 43H: Notifying the tribunal of the appeal

- 3.46 This section sets out the circumstances in which an appellant may notify an appeal to the tribunal.
- 3.47 Section 43H(1) provides that, where a review may be required or offered under section 43D(1) an appellant may notify the tribunal of the appeal;

Before a request for review or acceptance of a review offer

- at any time after sending HMRC an appeal provided no review is requested or review offer accepted (subject to section 43E(2)); or

After a request for review or acceptance of a review offer: conclusion notified

- within 30 days from the date on which HMRC notify the review conclusion; or

After a request for review or acceptance of a review offer: conclusion not notified

- within 30 days from the date on which the 45 days (or other agreed period) in 43F(1) expires or within 30 days of any further period which may be agreed (as provided for in 43F(3)).

- 3.48 Section 43H(2) provides that an appellant may notify an appeal to which subsection (1) does not apply to the tribunal at any time after they have notified the appeal to HMRC.
- 3.49 Section 43H(3) provides that the tribunal may only make orders in relation to an appeal once the appeal is notified to the tribunal.
- 3.50 Section 43H(4) confirms that the tribunal will determine those matters which are still in dispute, with matters which are agreed being settled under section 43G(3).
- 3.51 Section 43H(5) enables the tribunal to admit appeals which were not notified to it within the required 30 days on the application of the appellant. Section 43H(6) provides that any application to the tribunal to under subsection (5) must be in writing.

Section 43I: Notice by representatives

- 3.52 This section provides that notices given to, or received by, the

appellant include references to notices being given to, or received by, a person who is representing the appellant.

Other TMA provisions

Section 49: Extending time limits (sub-paragraph (23))

- 3.53 As substituted, section 49 is concerned with the stage at which taxpayers notify HMRC of the appeal, and makes provision for this to be done after the expiry of the relevant time limit.
- 3.54 Sections 49(2) and (3) provide that (as now), the application must be sent to HMRC. HMRC may consent to the application if it is satisfied that the taxpayer has a reasonable excuse and that the application was made without reasonable delay after the reasonable excuse ceased.
- 3.55 The key differences are to be found in sections 49(4) and (5) which provide respectively that if HMRC does not consent it must notify the taxpayer in writing and that following such notification it is open to the taxpayer to apply to the tribunal. This in line with overarching policy to secure clear and visible separation between HMRC and the tribunal.

Section 55: Recovery of tax not postponed (sub-paragraph (27))

- 3.56 Section 55 is amended to clarify the procedure for applying for postponement to reflect current practice.
- 3.57 As now, the appellant will apply to HMRC to postpone tax in dispute. If HMRC do not agree the amount of tax in dispute it will notify the taxpayer who may then apply to the tribunal within 30 days of the date HMRC notified the appellant that it refused the application.
- 3.58 As with late notification of appeals under section 49, the main change is that rather than HMRC referring the application to the tribunal, this will now be done by the appellant.
- 3.59 This is achieved by the substitution of a revised Section 55(3). Section 55(3)(a) provides that appellants must make their applications to HMRC (rather than to the tribunal) within 30 days of the disputed decision. Section 55(3)(b) provides that where HMRC and the appellant cannot reach agreement as to the amount to be postponed HMRC must notify the appellant of this fact, and it is then for the appellant to refer the application to the tribunal within 30 days of the date of notification.
- 3.60 In addition section 55(3A) is amended to enable HMRC to accept late postponement applications where it has accepted a late appeal under section 49.

Section 56: Payment of tax where there is a further appeal

- 3.61 This section takes the place of sections 56(9) and 56A(8) and (9).
- 3.62 The remaining provisions of these sections, and sections 56B to 56D, are omitted as they are replaced by powers within TCEA.

Income and Corporation Taxes Act 1988 (paragraph 6)

- 3.63 This paragraph makes consequential and other amendments to ICTA 1988.
- 3.64 In particular, subsections 705 (2) and (3), and Sections 705A, 705B and 706 are omitted.
- 3.65 These sections currently provide for the specialist section 706 tribunal to rehear appeals determined by the Special Commissioners under Section 705(1). Following discussions with specialist representatives of the industry during the consultation process it is considered that the transfer of functions of the section 706 tribunal and the Special Commissioners to the First-tier tribunal meant that the re-hearing function will become unnecessary. In future, where either party is unhappy with the determination of the First-tier Tribunal, the matter may be appealed to the Upper Tribunal.
- 3.66 The facility for rehearing by the section 706 tribunal ensured that the facts of the case could be reviewed by a panel which included people with business and financial skills. This is still catered for, as the new First-tier Tribunal will have flexibility to appoint a panel with an appropriate mix of legal, business and financial skills.

Finance Act 1994 (paragraph 10)

- 3.67 This paragraph amends sections 14 to 16 to implement the new approach to internal review, while leaving the existing provisions in place for restoration decisions. It also makes provision for cases where several decisions, one of which is a restoration decision, are made about the same subject matter. In addition, it provides for HMRC to allow late reviews under the existing section 14 procedures and for the tribunal to consider any refusal to allow such a late review.

Overview of new indirect tax review model

- 3.68 In the indirect taxes (except in relation to restoration decisions) HMRC will offer a review at the same time as it issues its decision as well as advising the customer of their appeal rights.
- 3.69 The person to whom the decision is issued then has 30 days in which to appeal to the tribunal or to accept the offer of review. HMRC may carry out reviews where the acceptance was late if the taxpayer has a reasonable excuse.

- 3.70 If a person accepts the offer of review HMRC must notify the outcome of the review within 45 days of receipt of the acceptance (unless another period is agreed). If HMRC does not notify the outcome of the review within the required period (and no further period is agreed) the review is treated as concluding that the disputed decision is upheld.
- 3.71 A person who has accepted an offer of review, but does not agree with the review conclusion, has a further 30 days from the date of the document notifying the review conclusion to appeal to the tribunal. If HMRC fail to notify the review conclusion within the required (or other agreed period), the person may appeal to the tribunal within 30 days of that period expiring.
- 3.72 Where a decision falling under the new review procedure is linked by its subject matter to a decision about restoration or the conditions of restoration the existing section 14 procedure is to be followed.

Section 14: Requirement for review of a decision

- 3.73 Section 14 is amended to remove all the decisions which can currently be the subject of a review under this section except for restoration decisions. In addition there is further amendment to add decisions which may not be reviewed under section 15D by virtue of section 15F (see paragraph 3.93).
- 3.74 This is achieved by removing decisions in section 14(1)(a) to (d) and inserting instead decisions specified in Schedule 5 paragraph 2(1)(r) (restoration decisions) and decisions to which section 15F applies. The removed decisions are inserted instead directly into section 16 (so giving a direct right of appeal). In addition, the regulation making powers in subsections (6) and (7) are also omitted here, and reinserted in section 16.
- 3.75 The heading is also amended for the purposes of clarity.

Section 14A: Review out of time

- 3.76 This provision removes uncertainty about the basis on which HMRC is able to accept a late review under the existing section 14 procedure, and ensures the tribunal may consider any decision not to conduct a review requested outside of the 45 day period provided for by section 14(3).
- 3.77 Section 14A(1) provides that if a notice requiring a review under section 14 has not been given during the 45 day period in section 14(3), HMRC shall carry out a review if;
- it is requested in writing; and
 - HMRC accepts that the person had a reasonable excuse for not giving notice within the time limit; and

- the request for review was made without unreasonable delay after the excuse had ceased to apply.
- 3.78 Section 14A(2) provides that if HMRC refuse the request, the person making the request may apply to the tribunal. On hearing the application the tribunal may order that HMRC conduct a review.
- 3.79 Section 14A(3) provides that a review conducted or ordered under this section is to be conducted under the section 15 procedure.

Section 15: Review procedure

- 3.80 This section is amended consequentially to clarify that section 15 now applies only to reviews required under section 14 or requested or ordered under section 14A.

Review (sub-paragraph (7))

- 3.81 This sub-paragraph inserts sections 15A to 15H which implement the new entitlement to an optional review.

Section 15A Offer of review

- 3.82 Section 15A provides that HMRC must offer a review when it notifies decisions to a person (P) in relation to which there is a right of appeal under section 16(1)(c) to (l) and where an onward right of appeal exists.

Section 15B P's options

- 3.83 Section 15B sets out the person's options on receiving an offer of review. If they disagree with the decision they may either appeal to the tribunal or accept the offer of review within 30 days of the date of the document notifying the offer. They cannot do both at the same time.

Section 15C: Review out of time

- 3.84 Section 15C provides for HMRC to carry out a review requested outside of the 30 day time limit, if HMRC accepts that there is a reasonable excuse for the lateness and provided the review request is made without unreasonable delay of the excuse ceasing to apply.

Section 15D: Conduct of review

- 3.85 Section 15D provides that HMRC must notify the outcome of the review within the 45 days (or other agreed period) from the date the offer of review is accepted.
- 3.86 Section 15D(2) makes clear that the nature and extent of the review may vary depending on the nature of the case. It therefore meets concerns expressed during the consultation that 'one size does not fit all'.
- 3.87 It specifies, in particular that the nature and extent of the review may take into account 'steps taken in reaching the decision or to resolve

disagreement about the decision'. For example a decision may already have been subject to a great deal of internal scrutiny, by people other than the decision maker and possibly the subject of legal advice either before or after the decision was made.

- 3.88 If HMRC does not notify the outcome of the review within the required period, subsection (3) provides that the review is treated as concluding that the disputed decision is upheld. Section 15D(3) also provides for a further period to be agreed. If a further period is agreed and HMRC still does not notify the person of the outcome of the review within the further agreed period, the review is also to be treated as concluding that the disputed decision is upheld. The appellant may then appeal to the tribunal under section 15E.
- 3.89 Section 15D(4) provides that the review may conclude that the decision is upheld, varied or cancelled.

Section 15E: Appeal following review

- 3.90 Section 15E makes explicit provision about appeal time limits following review.
- 3.91 Section 15E(1) provides that where an offer of review has been accepted, appeal provision in section 16(2A) are modified.
- 3.92 Section 15E(2) provides that a notice of appeal may be served within 30 days of the date of the document in which HMRC notify the conclusion of the review, or (where HMRC have failed to notify the review conclusion within the appropriate time) within 30 days of the time limit in section 15D(1) or 15D(3), as appropriate.

Section 15F: Review and appeal if section 14(2) review required

- 3.93 Section 15F provides that HMRC shall not undertake reviews of decisions covered by section 15A where a review has been required of a restoration decision under section 14(2) and the subject matter of the restoration review is the same subject matter as the decision for which review was offered under section 15A³.
- 3.94 Section 15F(1) provides that a review shall not be undertaken under section 15D where section 15A applies to the decision and the decision is linked by subject matter to a decision for which a review is requested under section 14(2).
- 3.95 Section 15F(2) provided that where subsection (1) applies, the review

³ For example, HMRC may disagree with the Commodity Code used and/or may consider that the wrong certificate of origin or other import documentation has been supplied. The goods might be seized and restoration offered for a fee. The importer may consider that the commodity code was correct and that accurate import documentation was supplied. The importer may want to;

- challenge the restoration;
- challenge the HMRC's decisions on the commodity code and whether he had fulfilled the origin requirements.

shall be conducted under section 15 and that the appeal shall be under section 16(1)(a) or (b).

Section 15G: Notice

3.96 Section 15G provides that references to the giving of notice to, or the receiving of notice by, a person include references to the giving of notice to, or receiving of notice by, a person acting on their behalf.

Section 15H: Meaning of “HMRC decision”

3.97 Section 15H provides that for the purposes of sections 15A and 15D ‘HMRC decision’ has the same meaning as provided for in section 119(11) Finance Act 2008⁴.

Section 16(1), (2), (2A), 2B and 2C.

3.98 Sections 16(1) and (2) are amended in order to give a direct right of appeal in respect of those decisions currently specified in section 14(1)(a) to (d) (but removed by this Order) (apart from restoration decisions and decisions to which section 15F applies) to those persons who may currently require a section 14 review.

3.99 The decisions currently in section 14(1)(a) to (d) are inserted in 16(1) and those persons who may currently require a review are inserted into section 16(2). Therefore the following have the right of appeal;

- The person liable to pay the duty or penalty resulting from the appealable decisions;
- The person in relation to whom, or on whose application, the decision was made; or
- The person to whom the conditions, limitations, restrictions, prohibitions, or other requirements imposed by the decision, are applied.

3.100 Section 16(2A) provides that an appeal notice must be served within 30 days of the date of the document notifying HMRC’s decision. This is subject to section 15E.

3.101 Section 16(2B) and (2C) provide that written application may be made to the tribunal for leave to appeal outside the time limit in (2A) and that the tribunal may grant leave.

Section 16(3)

3.102 Section 16(3) is amended to remove the requirement that all returns and duty payments (including the amount in dispute) must be paid and

⁴ Section 119(11) Finance Bill 2008 says HMRC decision means

“(a) any decision of the Commissioners relating to an HMRC matter,
or

(b) any decision of an officer of Revenue and Customs relating to an HMRC matter, and references to an HMRC decision include references to anything done by such a person in connection with making such a decision or in consequence of such a decision”

An HMRC matter is defined in clause 119 Finance Bill as meaning any matter connected with a function of the Commissioners or an officer of Revenue and Customs

substitutes a requirement that before the tribunal may entertain the appeal, only the disputed duty relating to the appeal must be paid.

Section 16(4)

3.103 Section 16(4) is amended as a consequence of the fact that a review is no longer a compulsory step in the appeals process. The Order substitutes “a review or further review” for “a review” to make clear that the tribunal may order a review (whether or not a review has previously taken place).

Section 16(13) and (14)

3.104 These sections insert the regulation making powers currently in section 14 (6) and (7) into section 16.

Section 60 (insurance premium tax)

3.105 Section 60 is amended to so that, instead of the tribunal awarding interest at a rate it decides, interest will be payable on amounts overpaid or underpaid in line with the tribunal’s determination at the rate applicable under section 197 of the Finance Act 1996.

3.106 In particular, section 60(6) is substituted and section 60(8) is amended. New section 60(6) provides that where the tribunal determines that the whole or part of any disputed amount is due to the appellant, that amount shall be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996.

3.107 Section 60(8), as amended, provides that where an appeal has been heard without payment or deposit of the disputed amount, any amount that the tribunal determines to be payable shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996.

Schedule 6 (air passenger duty administration and enforcement)

3.108 Schedule 6 is amended to remove the requirement that all returns and duty must be paid before an appeal can be heard and to provide that, instead of the tribunal awarding interest at a rate it decides, interest will be payable on amounts overpaid or underpaid in line with the tribunal’s determination at the rate applicable under section 197 of the Finance Act 1996.

3.109 The requirement that all returns and duty must be paid before an appeal can be heard is removed by inserting, after “any return” in paragraph “for an accounting period to which the appeal relates”. This clarifies that the only payments required, and returns that need to be submitted are those which are in dispute.

3.110 The ability of the tribunal to determine the rate at which interest should be paid is amended by substituting “at such rate as the tribunal may determine” in paragraph 8(1) with “at the rate applicable under section 197 of the Finance Act 1996”.

Value Added Tax Act 1994 (paragraph 11)

Summary of new indirect tax review model

3.111 The way in which the review and appeals process will work in direct taxes has already been described at paragraph 3.68 – 3.72 above, and VAT follows this model.

3.112 When HMRC issues an appealable decision it will (at the same time as advising the customer of their appeal rights) offer a review. The person to whom the decision was issued then has 30 days within which to either appeal to the tribunal or to accept the offer of review. HMRC may carry out reviews where the acceptance is late, if the taxpayer has a reasonable excuse.

3.113 If a person accepts the offer of review HMRC must notify the outcome of the review within 45 days (or other agreed period) of the date the acceptance of the review offer is received. The person then has 30 days within which to appeal to the tribunal.

3.114 If HMRC does not notify the outcome of the review within the required period (and no further period is agreed) the review is treated as concluding that the disputed decision is upheld and section 83A.

3.115 Sections 82A to 82G implement the new entitlement to an optional review.

Section 82A: Offer of review

3.116 Section 82A provides that HMRC must offer a review when it notifies decisions for which there is a right of appeal under section 83 and where an onward right of appeal exists.

Section 82B: P's options

3.117 Section 82B sets out the person's options on receiving an offer of review. If they disagree with the decision they may within 30 days either appeal to the tribunal as provided by section 83A or accept the offer of review. They cannot do both at the same time.

Section 82C: Review out of time

3.118 Section 82C provides for HMRC to carry out reviews requested outside of the 30 day time limit. HMRC will accept a late request if:

- the person requests the review late, and
- HMRC are satisfied that there is a reasonable excuse for the late acceptance, and
- the request is made without unreasonable delay after the excuse ceased to apply.

Section 82D: Conduct of review

- 3.119 Section 82D provides that HMRC must notify the outcome of the review within 45 days (or other agreed period) from the date they receive notification that the offer of review is accepted.
- 3.120 Section 82D(2) makes clear that the nature and extent of the review may vary depending on the nature of the case. It therefore meets concerns expressed during the consultation that 'one size does not fit all'.
- 3.121 It specifies, in particular that the nature and extent of the review may take into account 'steps taken in reaching the decision or to resolve disagreement about the decision'. For example a decision may already have been subject to a great deal of internal scrutiny by people other than the decision maker and possibly the subject of legal advice either before or after the decision was made.
- 3.122 If HMRC does not notify the outcome of the review within the required period, or any period subsequently agreed, subsection (3) provides that the disputed decision is treated as upheld. Section 82E provides that an appeal may be served within 30 days after the end of the appropriate period.
- 3.123 Section 82D(4) provides that the conclusion of the review may be that the decision should be upheld, varied or cancelled.

Section 82E: Appeal following review

- 3.124 Section 82E modifies the appeal time limits in section 83A when a review offer has been accepted.
- 3.125 Section 82E(1) provides that the time limits in section 83A are modified when a review offer is accepted.
- 3.126 Section 82E(2) provides that where an offer of review has been accepted, the person may serve a notice of appeal within 30 days after the earlier of the date of the document notifying the conclusion of the review or (if HMRC do not notify the outcome of the review within the appropriate time) the expiry of the time limit in section 82D(1) or 82D(3) as appropriate.

Section 82F: Notice

- 3.127 Section 82F provides that references to giving of notice to, or receipt of notice by, a person include references to the giving of notice to, or receipt of notice by, a person acting on their behalf.

Section 82G: Meaning of HMRC decision

- 3.128 Section 82G provides that for the purposes of sections 82A and 82D 'HMRC decision' has the same meaning as provided for in section

119(11) Finance Act 2008⁵.

Section 83A: Time limit for appealing

3.129 Section 83A provides that an appeal under section 83 VATA must be brought to the tribunal by notice within 30 days of the date of the document containing the disputed decision. This section is subject to section 82E. Section 82E provides a modified time limit where an offer of review has been accepted.

3.130 Section 83A(2) and (3) provide that recipients of decisions may ask the tribunal for leave to make a late appeal and that the tribunal may grant leave.

Section 84: Further provisions relating to appeals

3.131 Section 84 is amended to remove the requirement for all returns and payments to be made before an appeal may be entertained by the Tribunal, and to provide for a new procedure to enable efficient consideration of hardship applications.

3.132 In particular, section 84(2) (which contains the requirement to submit all returns) is omitted and sections 84(3) and 84(3A) are substituted so that the requirement to pay the disputed amount is

- subject to new subsections 83(3B) and 84(3C) (hardship), and
- restricted to the requirement to pay the tax in dispute.

3.133 Sections 84(3B) and (3C) provide revised arrangements for hardship applications. Section 84(3B) provides for hardship applications to be made to HMRC, which may consider and agree that hardship applies. Section 84(3C) provides that if HMRC and the person are unable to agree the hardship application the person may apply to the tribunal to determine the matter.

3.134 Section 84(9) is amended to take account of the revised approach to review and appeal within Finance Act 1994 (Customs and Excise appeals).

Section 85: Settling appeals by agreement

3.135 Section 85(1) is amended to align this provision with the parallel provision in section 54 of TMA. It is not intended to result in any change of practice in cases where costs could be awarded if the appeal were to be determined by the tribunal.

Section 85A Payment of tax on determination of appeal

3.136 Section 85A provides that interest will be paid on amounts overpaid or underpaid in line with the tribunal's determination and that interest on such amounts will be paid at the rate applicable under section 197 of the Finance Act 1996.

⁵ See footnote 4.

3.137 Section 85A(1) provides that the section applies when the tribunal has determined an appeal under section 83.

3.138 Section 85A(2) provides that if the tribunal determines that

- an amount that has been paid is not due; or
- an amount of credit due to an appellant that has not been paid should have been paid;

it shall be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996.

3.139 Section 85A(3) provides that where the tribunal determines that an amount that has not been paid to or credited by HMRC is due, or should not have been credited, the amount is to be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996.

3.140 Section 85A(4) provides that nothing in section 85A requires HMRC to pay interest on any amount in respect of which a repayment supplement is due under section 79 or on the amount of the supplement payable.

Section 85B: Payment of tax where there is a further appeal

3.141 Section 85B applies to amounts determined by the tribunal or a court which are subject to further appeal. It aligns VAT legislation with direct tax legislation by making express provision for payment and repayment of tax in line with tribunal decisions and court judgements.

3.142 Section 85B(1) provides that VAT must be paid or repaid in accordance with the decision, notwithstanding the fact that there may be a further appeal.

3.143 Section 85B(2)(a) provides that if the higher court finds that too much tax has been paid or too little credit made, the amount overpaid to or underpaid by HMRC shall be paid or repaid with such interest as the Upper Tribunal or court allows.

3.144 Section 85B(2)(b) provides that if the higher court finds that too little tax has been paid or that all or part any VAT credit paid was not payable, the amount due or not payable shall be due or repayable 30 days after the date on which HMRC issues the other party with a notice of the total amount payable in accordance with the judgement.

3.145 Section 85B(3) provides that for the purposes of revenue protection, the tribunal or court may give permission for the amount not to be paid or repaid by HMRC, or for it to be paid or repaid subject to the provision of adequate security.

3.146 Section 85B(4) provides that HMRC may, on grounds of financial

extremity, except that subsection (6) should apply.

- 3.147 Section 85B(5) provides that if HMRC and the other party cannot reach agreement the other party may apply to the tribunal or court for determination of the issue.
- 3.148 Section 85B(6) provides that in considering an application under section 85B(3), (4) or (5) HMRC or the tribunal may agree that the whole or part of the amount due is not paid or repaid, or is not paid subject to the provision of security, until the appeal is determined.
- 3.149 Section 85B(7) provides that security due under section 85B(3) or (6) may be in such amount and in such a manner as the tribunal or court determine, and that on an application under (3) HMRC may accept such security as they consider adequate to protect the revenue.
- 3.150 Section 85B(8) provides that applications under this section should be made to the tribunal or court from whom leave to appeal is sought.
- 3.151 Section 85B(9) provides that any such agreement ceases to have effect once the appeal has been determined.

Finance Act 1996 (Landfill tax)

Section 55 (landfill tax, appeals)

- 3.152 Section 55 is amended to remove the requirement for all returns and payments to be made before an appeal may be entertained by the Tribunal. It also provides for a new procedure to enable efficient consideration of hardship applications.
- 3.153 Section 55(3) is substituted so that the requirement to pay is restricted to the requirement to pay the tax in dispute.
- 3.154 Sections 55(3AA) and (3AB) provide revised arrangements for hardship. Section 3AA provides for hardship applications to be made to HMRC, who may consider and agree the matter.
- 3.155 Section 55(3AB) provides that if HMRC and the person are unable to reach agreement as to the issue of hardship, the person may apply to the tribunal for a determination of the matter.

Section 56 (landfill tax: appeals: other provisions)

- 3.156 Subsections 56(3) to (5) are amended to provide that amounts overpaid or underpaid will be paid or repaid in line with the tribunal's determination with interest at the rate applicable under section 197 of the Finance Act 1996.
- 3.157 Section 56(8) is amended to include reference to section 85B (payment of tax where there is a further appeal).

Finance Act 2000: Schedule 6 (Climate change levy, review and appeal)

Paragraph 122

- 3.158 The amendment to paragraph 122 provides for a new procedure to enable efficient consideration of hardship applications.
- 3.159 Paragraphs 122(2AA) and (2AB) provide revised arrangements for hardship applications. Section 2AA provides for hardship applications to be made to HMRC, which may consider and agree the matter.
- 3.160 Paragraph 122(2AB) provides that if HMRC and the person are unable to reach agreement as to the issue of hardship, the person may apply to the tribunal for a determination of the matter.

Paragraph 123

- 3.161 Paragraphs 123(4) to (6) provide that amounts overpaid or underpaid will be paid or repaid in line with the tribunal's determination, with interest at the rate applicable under section 197 of the Finance Act 1996.
- 3.162 Paragraph 123(7) is amended to include reference to section 85B (payment of tax where there is a further appeal).

Finance Act 2001 (Aggregates Levy)

Section 41 (aggregates levy: determinations on appeal)

- 3.163 Section 41 is amended to provide for a new procedure to enable efficient consideration of hardship applications.
- 3.164 Section 41(2AA) and (2AB) are inserted after section 41(2) and provide revised arrangements for hardship applications. Section 41(2AA) provides for hardship applications to be made to HMRC, who may consider and agree the matter.
- 3.165 Section 41(2AB) provides that if HMRC and the person are unable to reach agreement as to the issue of hardship, the person may apply to the tribunal for a determination of the matter.

Section 42 (aggregates levy: determinations on appeal)

- 3.166 Sections 42(4) to (6) provide that amounts overpaid or underpaid will be paid or repaid in line with the tribunal's determination, with interest at the rate applicable under section 197 of the Finance Act 1996.
- 3.167 Section 42(7) is amended to include reference to section 85B (payment of tax where there is a further appeal).

Schedule 3

- 3.168 Paragraph 14(4) (excise appeals – interest) provides that amounts overpaid or underpaid will be paid or repaid in line with the tribunal's determination, with interest at the rate applicable under section 197 of

the Finance Act 1996.

Income Tax Act 2007

3.169 Sections 704 and 706 to 711 are omitted, and related provisions amended in parallel with the changes to sections 703 to 706 of ICTA 1988.

Schedule 2: Transitional Provisions

Transitional provisions

3.170 Paragraph 1 provides that any proceedings already notified to one of the existing tribunals at 1 April 2009 will be treated as though it had been brought to the tribunal established under section 3 of TCEA 2007.

3.171 Paragraphs 2 to 4 provide some specific provisions in support of this.

Direct tax appeals

3.172 Paragraph 5 provides that where paragraph 1 applies, the matter will be handled on the basis of legislation as it was before the commencement date.

3.173 Paragraph 6 provides that, subject to paragraph 7, in all other cases appeals which would have been heard by the General Commissioners or the Special Commissioners, shall be conducted under the provisions of TMA and other relevant enactments as amended by this Order.

3.174 Paragraph 7 provides where a notice of appeal has been given to HMRC before the date on which this Order comes into effect, and a review is required or offered under section 43D within 12 months of that date, the time limit within which HMRC must give notice of the conclusion shall be 90 days.

3.175 Consultation responses indicated widespread support for reviews to be available for existing direct tax appeals. In addition, there was acceptance that a balance was needed to ensure sufficient resources so that the credibility of the new process was not put at risk.

3.176 Accordingly the review process is available to the existing direct tax appeals, but to ensure sufficient flexibility the proposed default time limit within which HMRC must conduct their review is 90, rather than 45 days for the first year.

Indirect tax appeals

3.177 Paragraph 8 provides that, subject to paragraphs 9 and 10, where an HMRC decision is notified before the commencement of this Order, the appeal is to be conducted on the basis of the legislation as it was before that date.

3.178 Paragraph 9 provides that Section 85B (payment of tax where there is an onward appeal) shall apply to all reviews and appeals made from decisions of the VAT and Duties Tribunals on and after the day the Order comes into effect.

3.179 Paragraph 10 provides Section 85A of VATA and paragraph 14(4) of schedule 3 to Finance Act 2001 (as amended by this Order) to all tribunal decisions from the date the Order comes into effect.

3.180 Paragraph 11 provides that where an HMRC decision is notified to a person after the date that this Order comes into effect the matter shall be considered in accordance with the provisions brought into effect by this Order.