

**THE INDEPENDENT REVIEW OF
THE MEMORANDUM OF
UNDERSTANDING BETWEEN
HER MAJESTY'S REVENUE AND
CUSTOMS AND THE SOCIAL
SECURITY ADVISORY
COMMITTEE**

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April 2008

EXECUTIVE SUMMARY

1. The Social Security Advisory Committee (SSAC) is a statutory body formed in 1980, with responsibility for providing advice on social security policy, considering and reporting on social security regulations referred to it and advising on any matters referred to it by the Secretary of State for Work and Pensions.
2. HM Revenue and Customs (HMRC) is a non-Ministerial Government Department, formed in April 2005 following the merger of Inland Revenue (IR) and HM Customs and Excise. The department's responsibilities include National Insurance Contributions (NICs) and the distribution of Child Benefit and Guardian's Allowance and some other forms of state support including the Child Trust Fund and tax credits.
3. Her Majesty's Treasury (HMT) plays an integral role in the work of HMRC through the Policy Partnership. The Policy Partnership is one of the outcomes of the 2004 O'Donnell Review, put in place to ensure the successful delivery of changes in tax policy and administration.
4. SSAC has no statutory advisory responsibility in relation to HMRC or HMT. However, in the case of NICs, tax credits, Child Benefit and Guardian's Allowance, a Memorandum of Understanding (MoU) between the Committee and former IR was signed in July 2004. Unlike the relationship with the Department for Work and Pensions (DWP), SSAC are bound by confidentiality in relation to any comments on HMRC regulations and advice to HMT Ministers.

The Review

5. I was formally commissioned by the Financial Secretary to the Treasury (FST) in December 2007 to conduct an Independent Review of the MoU between SSAC and HMRC.
6. The Review's terms of reference were laid down in the MoU. They are:
 - To consider whether the MoU is being adhered to;
 - To consider whether the process and role adds value and is operating well for both HMRC and SSAC;
 - To consider in light of the findings, any recommendations for improvement.

7. It soon became apparent that DWP and HMT needed to be involved if the Review was to achieve its objectives. Moreover, a replacement MoU would need to include HMT as well as SSAC and HMRC. Accordingly, with the agreement and involvement of all parties, two more elements of the Terms of Reference - key to making recommendations for the MoU's improvement - emerged:
 - To examine the working relationship between SSAC and DWP;
 - To consider how best HMT can be involved with SSAC on a formal basis in the future.

Evidence Gathering

8. It is clear when speaking to all parties that the MoU got off to a bad start for a variety of reasons, and to date has added little value to the development of policy, secondary legislation or public information for tax credits or NICs. From the beginning both parties were themselves uncomfortable with this basis of working and believed the other party felt the same.
9. SSAC and IR had previously had a working relationship on an informal, sometimes in confidence, basis in relation to NICs and tax credits. This relationship changed with the introduction of tax credits in 2003. The previous informal working relationship between SSAC and IR, whilst apparently producing satisfactory results, had not required either party to fully explore the other's history, culture, role and expectations: such basic knowledge was deficient on both sides. No special effort had been made to allow for this situation when the MoU was introduced in 2004 and an entirely new, formal relationship commenced.

Evaluation of Evidence

10. A number of both unanimous and organisation-specific points were consistently raised throughout the course of the Review. In particular, four key points emerged in relation to confidentiality; the wide-ranging nature of today's social policy scene, a potential extension of SSAC's expertise and the involvement of HMT in any revised Memorandum.
11. The confidentiality arrangement in the existing MoU has caused great difficulties for SSAC (both as a Committee and for its individual members) and mystification for most other parties. Its intention was recognisable at a time when tax credits policy and regulation was brand new, evolving and highly contentious. But as the years have elapsed it seems to have crystallised into a problem, rather than a solution.
12. The social policy scene is now far more wide-ranging than when SSAC and DWP could encapsulate all "social security" regulation within their discrete remit. Social policy developments moved some pieces of what had been DWP responsibilities to IR and then the new tax credit scheme firmly established HMRC alongside DWP as joint deliverers of state financial provision to individuals at various stages of their lives. With the introduction of the Policy Partnership between HMT and IR in late 2004,

SSAC has in effect been working with three Government Departments on three different bases. This development hasn't yet been fully explored, which has led to misunderstandings.

13. SSAC's role as an independent, knowledgeable body, with an overview of legislative developments would now require it to relate to HMRC and HMT too if it was to be truly effective. In this context, SSAC would significantly enhance its ability to encompass HMRC's responsibilities if it strengthened its personal and business tax expertise and direct experience of tax credit practicalities. Its statutory constitution precludes a straightforward increase in membership, but legal advice from both DWP and HMRC has helped to produce a potential solution for consideration. With this extension of SSAC's overarching interests beyond DWP, the arrangement that this Department provides for all the staff and costs of the Secretariat should also be modified appropriately.

The Way Forward

14. The current MoU, while perfectly adequate in many ways, emphasises the letter of the law rather than invoking its spirit. It would not take much to remove this negative impression and transform the MoU into a constructive basis for working – something HMT Ministers, SSAC members and HMRC officials would all value.
15. Despite the frustrations of believing they were not working effectively through the current MoU, both SSAC and HMRC interviewees have given strong indications that a fully functional arrangement would bring benefits to both parties and their shared objectives. Given this encouraging basis and the desire of HMT Ministers to have a productive SSAC/HMRC relationship, it seems well worthwhile to invest in getting an amended MoU devised and implemented in the best possible spirit.
16. Shared understandings, agreed procedures and arrangements that support open, constructive business transactions should be the basis of a new MoU, which should be jointly produced as quickly as possible: three months is a reasonable goal. The formal arrangement an MoU affords is definitely required: the scale and significance of a business relationship involving SSAC, HMRC, HMT and DWP couldn't be properly protected without it.
17. Ten specific recommendations (five key and five supporting) should enable this major complex relationship to be improved beyond its current, sub-optimal level. Working well, it should provide a useful contribution to the delivery of social welfare policy via effective legislation.

The Independent Review of the Memorandum of Understanding between Her Majesty's Revenue and Customs and the Social Security Advisory Committee

TEN RECOMMENDATIONS

1. Based on the consistent evidence provided by stakeholders throughout the review, and the evaluation of it, the Review has produced five key and five supporting recommendations to improve the working relationship between HMRC, HMT and SSAC via an MoU.
2. **Key Recommendations:**
 - 2.1. **A revised Memorandum of Understanding to be rapidly agreed and signed by HMRC, SSAC and HMT within, say, three months i.e. by August 2008 (see paragraph 45).** The revised Memorandum will describe the working arrangements for the review of draft secondary legislation and information products; the provision of advice, and its publication arrangements. It will recognise the value for all three parties in taking this relationship forward, concentrate on outcomes and recognise the timescales that will best facilitate the arrangement. Its rapid production will go a long way to dispel existing shortcomings in the working relationship.
 - 2.2. **HMT should sign up to the Memorandum to enable effective policy dialogue between it, HMRC, DWP and SSAC (see paragraph 49).** This will include taking part in policy forward looks, attending meetings in joint teams with HMRC and DWP, and presenting early policy proposals to the Committee as appropriate.
 - 2.3. **There should be an extension of SSAC membership on a non-statutory basis to increase its knowledge of Personal and Business Tax and practical tax credit experience in the short to medium term (see paragraph 55).** Three or four respected experts on personal and small business tax and tax credit practicalities should augment SSAC. They could be appointed to form a small advisory group: a working title is SSAC's Tax Advisory Group. This group would support the Committee in scrutinising HMRC and DWP regulations, and assessing the potential impact of policies across Departments. SSAC, HMRC and HMT should appoint this Tax Advisory Group under procedures that must comply with the Code of Practice of the Office of the Commissioner for Public Appointments. HMRC and HMT would be the prime source of suitable nominations and HMRC would fund these additional appointments. As opportunities arise, candidates with the relevant expertise could be targeted when future appointments to SSAC are made. Consequently the need for a special Tax Advisory Group for SSAC would eventually disappear.
 - 2.4. **Current confidentiality arrangements should be removed from the MoU (see paragraph 48).** It would be more constructive and

effective to adopt a system of disclosure akin to that already in place between SSAC and DWP. Under this relationship, SSAC's advice in relation to regulations is not published until such time as these regulations are laid before Parliament. Specific additional arrangements to ensure confidentiality in relation to policy presentations and discussions can be agreed ad hoc with SSAC if necessary: again the DWP/SSAC relationship can provide examples.

2.5. The SSAC Secretariat should include HMRC officials (see paragraph 58 and 59). The Secretariat should include HMRC officials in order to improve joint working across DWP, HMRC and HMT and to clearly signal joint commitment to the MoU. Subject to the normal rules of open competition, efforts could be made to rotate the Secretary's post between DWP and HMRC. In the short term, an additional post could be created and filled by an experienced HMRC fast-streamer with the express responsibility of establishing effective business channels between all relevant parts of HMRC and HMT and SSAC. All seconded officials from HMRC should be funded by HMRC.

3. Supporting Recommendations:

3.1. HMT Ministers should consider moving towards a relationship with SSAC comparable to the one it currently has with DWP Ministers (see paragraph 42). Such a step will confirm HMT Ministers' expressed recognition of SSAC's added value to the legislative process and the interaction between HMT and DWP policies. HMT Ministers might attend SSAC meetings periodically and meet the Chairman informally.

3.2. A short, professionally facilitated initiative to embed the new MoU and the significant relationship it supports should be commissioned by HMRC and SSAC by the end of May 2008 (see paragraph 62). Clarification and resolution of shortcomings in the current arrangement is needed before the next phase of joint working can begin. Finalising the MoU can be an output of this initiative: so can the commencement of one or two joint projects of practical business value, involving SSAC members and officials from DWP and HMRC.

3.3. SSAC should routinely call joint teams of officials from HMRC, HMT and DWP in cases where policy or legislation may impact across departments (see paragraph 50). In order to effectively read across the work of DWP and HMRC/HMT, it is important that officials from DWP, HMRC and HMT are invited to all meetings where SSAC identify a potential policy impact across departments.

3.4. SSAC members should visit HMRC operational sites, as they do DWP sites (see paragraph 57). Such a step would improve SSAC members' knowledge of HMRC's business and culture, and enable them to observe the practical effects of legislation and public information. Any essential differences in practice e.g. around taxpayer confidentiality, would need to be catered for.

3.5. **The revised MoU should be reviewed after one year of operation by the three parties concerned with input from DWP (see paragraph 65).** The review should aim to identify further improvements in the way HMT/HMRC make use of SSAC's potential contribution to their development of legislation and public information.

The Independent Review of the Memorandum of Understanding between Her Majesty's Revenue and Customs and the Social Security Advisory Committee

BACKGROUND

The Social Security Advisory Committee

Historical background and remit

1. SSAC was formed in 1980 as the main UK advisory body on social security matters. It took over the advisory functions of the former Supplementary Benefits Commission and the National Insurance Advisory Committee, and also assumed advisory responsibility for Family Income Supplement, Child Benefit and, later, Rent and Rate Rebates and Housing Benefits and Council Tax Benefit, which had not previously come within the scope of any advisory committee.
2. The Committee is a statutory body now covered by the Social Security Administration Act 1992. Its responsibilities are to give advice on social security policy, consider and report on proposals for social security regulations referred to it and to advise on any matters referred to it by the Secretary of State for Work and Pensions. From April 2000, at the request of the Secretary of State for Work and Pensions, the Committee took on the task of scrutinising the DWP's public information strategy.
3. SSAC has a transparent but formal relationship with DWP. Draft regulations or proposals for regulations must be formally referred to the Committee by the Secretary of State or the Northern Ireland Department responsible for social security issues unless they are exempted (this applies to most regulations on the up-rating of benefits and those regulations made within 6 months of the enactment of primary powers); or the Committee agrees this is not required. The Secretary of State considers the Committee's recommendations and, when the regulations are finally laid before Parliament, the Committee's report and his statement explaining the response to its recommendations must also be laid.
4. SSAC has no statutory advisory responsibility in relation to HMRC. However, in the case of NICs, tax credits, Child Benefit and Guardian's Allowance, an MoU between the Committee and IR was signed in July 2004. This MoU set up formal arrangements under which the Committee is invited to comment on matters within HMRC's responsibility and to provide advice to HMT Ministers.
5. A copy of the current MoU is at Annex A. Unlike the relationship with DWP, SSAC are bound by confidentiality in relation to any comments on HMRC regulations and advice to HMT Ministers.

Membership of the Committee

6. Under Schedule 5 of the Social Security Administration Act 1992, SSAC consists of a Chairman and between 10 and 13 other members. The Secretary of State for Work and Pensions appoints the Chairman and members of the Committee, under procedures that must comply with the Code of Practice of the Office of the Commissioner for Public Appointments. Members are usually appointed for three year terms, and may serve up to a total of ten years. At the expiry of the final term, members can apply for re-appointment in open competition, and if selected may serve for up to an additional ten year maximum period. SSAC currently has its maximum of 14 members.

Secretariat

7. The Committee is currently supported by a secretariat of four full-time and one part-time staff members, all on loan from DWP. Loan periods to the Secretariat generally last around two or three years. The current Secretary has been in post for 10 years.

HM Revenue and Customs

Historical background and remit

8. HMRC is a non-Ministerial Government Department, formed in April 2005 following the merger of IR and HM Customs and Excise. The Department is responsible for the administration and collection of direct taxes, indirect taxes, excise duties, stamp duty land tax and environmental taxes such as air passenger duty and the climate change levy. The Department's responsibilities also include NICs and the distribution of Child Benefit and Guardian's Allowance and some other forms of state support including the Child Trust Fund and tax credits.
9. HMRC also currently plays a key role at the frontier, protecting the UK's border against the illegal import and export of goods. The Department also seeks to facilitate legitimate international trade and travel and is responsible for administering European Union customs requirements. The operational work at the frontier will move to the recently announced UK Border Agency.

The HMRC/HMT Policy Partnership

10. HMT plays an integral role in the work of HMRC through the Policy Partnership. The Policy Partnership is one of the outcomes of the 2004 O'Donnell Review, put in place to ensure the successful delivery of changes in tax policy and administration. HMT and IR first published guidelines for the partnership in October 2004, three months after the SSAC/IR MoU was signed.
11. In practical terms, HMT is responsible and accountable for strategic work, and for leading tax policy development, while HMRC is the lead on policy maintenance - supporting HMT to meet its remit - and delivery. Both

departments support the other in their activities. This is a unique relationship and puts HMRC in a fundamentally different situation from DWP, which is responsible for both its own policy development and delivery.

The relationship between SSAC and HMRC

12. In 1997/8 the incoming Government commenced a wide-ranging programme of reform of the tax and benefits systems known as the Welfare to Work Programme. The goals of this programme were to promote employment and tackle poverty with a particular emphasis on child poverty. As a consequence of this programme of reform, a number of DWP's responsibilities transferred to IR.
13. First, in April 1999 responsibility for NICs passed to IR. Then, the Tax Credits Act 1999 replaced Family Credit and Disability Working Allowance with Working Families Tax Credit and Disabled Persons Tax Credit: responsibility for them was also transferred to IR. Finally, the Tax Credits Act 2002 transferred responsibility for Child Benefit from DWP to IR and introduced, from April 2003, an integrated child tax credit as part of IR's personal tax responsibilities. It drew together the various forms of state support for children in existing benefits and tax credits.
14. As a result of these departmental changes in responsibility, SSAC lost its statutory role in relation to NICs, Child Benefit and Guardian's Allowance: it has never had a statutory role in relation to Working Families Tax Credit, Disabled Persons Tax Credits or the new tax credits, all of which have always been IR/HMRC's responsibility.
15. Prior to the 2004 Quinquennial Review of SSAC, the relationship between SSAC and IR had been informal in its nature. SSAC had been involved in the consultation process for tax credits prior to the passing of the Tax Credits Act in 2002. When the Contributions Agency merged with IR in 1999, exchanges between SSAC and IR officials show that a relationship on an informal, and sometimes in confidence, basis was agreed in relation to those NICs regulations that would have an effect on benefit entitlement. These exchanges show that in practice IR viewed SSAC as one of their consultation groups, rather than a body with any particular role or authority.
16. On 24 January 2002, during the 8th sitting of the Standing Committee debate on the Tax Credit Bill, the Paymaster General said that she had asked her officials "to make sure that the Committee was shown all relevant regulations in draft so that we benefited from its members' expertise" She expressed her "appreciation of the contribution that those people make" and said that officials were "in touch with the committee to ensure that arrangements are made for the dialogue to continue and progress". However, following the introduction of Working and Child Tax Credits in April 2003, this relationship had clearly changed.

17. The Work and Pensions Select Committee Report on SSAC recommended that SSAC's statutory authority should be extended "to cover the various areas of social policy such as Tax Credits, which are replacing benefits which were formerly the province of SSAC". The 2004 Quinquennial Review of SSAC commented on the unsatisfactory nature of the informal arrangements between SSAC and IR. It too recommended that the arrangements between SSAC and HMRC should be on a statutory basis and proposed that the Committee's name should be changed accordingly. The Quinquennial Review went on to say that if the statutory extension was not accepted, then a greater formalisation of the existing arrangements was the least that should be done.
18. The Government response to both of these reports recognised the importance of maintaining the principle of having an expert independent body to provide advice across the range of benefit and tax credit issues, but advised that it did not consider a statutory relationship to be appropriate. It suggested instead that a formal agreement in the form of an MoU be reached and signed by SSAC and HMRC on a non-statutory basis.

The 2004 Memorandum of Understanding between SSAC and HMRC

19. In July 2004, an MoU was agreed and signed by both the Chairman of SSAC and the Deputy Chairman of IR. It invites the Committee to offer advice to HMRC on proposals for regulations concerning tax credits, Child Benefit and Guardian's Allowance and aspects of NICs that affect benefit entitlement, in a way that is similar to its statutory function in relation to Social Security matters. The MoU states that HMRC will normally give the Committee a minimum of 12 working days from the date the regulations are formally referred for scrutiny to consider draft regulations.
20. The MoU also invites the Committee to provide advice on draft information products on request and to offer advice to HMT Ministers on policy matters and public information strategies in relation to tax credits, Child Benefit or Guardian's Allowance, on request or where they feel appropriate. The MoU states that HMRC will provide the Committee with a minimum of 20 working days in which to comment on drafts of information products.
21. Under the MoU, advice provided by the Committee must be in confidence and any comments or advice provided, or responses the Committee receive, must not be published. This is in contrast to SSAC's relationship with DWP, within which the Committee's reports on proposed regulations and a statement explaining the response to these recommendations must be published by the Secretary of State. Other outputs from the Committee, including comments on public information materials are also, with very few exceptions, published.

Monitoring, evaluation and review

22. The MoU provides for the operation of the arrangements between HMRC and SSAC to be monitored and reviewed and for SSAC to include a commentary about the operation of the MoU in its Annual Report. It says

that either HMRC or SSAC can initiate a review if they feel the arrangements are not operating in line with the MoU or where there is a need to resolve problems.

23. In the 2005 18th SSAC Annual Stewardship Report, the Committee stated its intention to review the MoU at the end of the year. Accordingly, work began informally in 2006 in preparation for both parties to conduct an internal review of the MoU.

24. In the 2006 19th SSAC Annual Stewardship Report, the Chairman of SSAC expressed concern that the MoU was not working. The Review had not started and this was discussed by SSAC and HMRC. The Chairman of SSAC formally wrote to the Acting Chairman of HMRC in February 2007 with a proposal for a joint independent review.

METHODOLOGY OF THE REVIEW

25. After agreement between the Chairman of SSAC and the then Chairman of HMRC in November 2007 I was formally Commissioned by the FST in December 2007 to conduct an Independent Review of the MoU between SSAC and HMRC. The Review, jointly sponsored by SSAC and HMRC, commenced in January and ended in April 2008. I was assisted by Ina Perry, a Higher Officer who was on secondment from HMRC and Nicola Smith, a member of the Fast Stream in HMRC.
26. The Review's original terms of reference were laid down in the MoU. They are:
- To consider whether the MoU is being adhered to;
 - To consider whether the process and role adds value and is operating well for both HMRC and SSAC;
 - To consider in light of the findings, any recommendations for improvement.
27. It soon became apparent that DWP and HMT needed to be involved if the Review was to achieve its objectives. Moreover, a replacement MoU would need to include HMT as well as SSAC and HMRC. Accordingly, with the agreement and involvement of all parties, the Review extended into those two departments; some of its recommendations relate to all four parties.
28. As a result, two further elements of the Terms of Reference - key to making recommendations for the MoU's improvement - emerged:
- To examine the working relationship between SSAC and DWP;
 - To consider how best HMT can be involved with SSAC on a formal basis in the future.
29. Between mid-January and mid-April 2008 the Review team have conducted a series of face-to-face interviews, group meetings and telephone interviews with nearly 40 stakeholders.
30. Some of the key players have been interviewed two or three times to test out ideas, verify facts or describe their experience. The Review team would like to record our appreciation to all contributors for the unfailing cooperation we received, despite other demands on their time. A list of interviewees can be found at Annex B.
31. We have also reviewed a number of documents, emails and publications and observed a SSAC Committee meeting. We have taken legal advice from both HMRC and DWP lawyers whenever our proposals have touched upon SSAC's statutory role and constitution.

EVIDENCE GATHERING

32. Most of the interviewees initially expressed their views and recollections in strong terms: there are clearly concerns around the working of the current MoU. By the end of nearly all discussions though, there was a great deal of constructive analysis.
33. There was a striking degree of unanimity in the points people either volunteered or gave in answer to common questions. The following points were made time and again by interviewees, no matter which organisation they were from.

Common Points from all Interviewees

- a) SSAC and HMRC's working relationship through the current MoU has not been effective. It has added little value to the development of policy, legislation or public information for tax credits or NICs. In its current form, it is mutually unsatisfactory and it would be better to end the relationship, rather than to expend further time and effort to maintain the existing sub-optimal arrangement.
- b) HMT Ministers can have seen little value to date in the particular contribution that SSAC makes to HMRC's policy, legislative and public information process. However, if they would like a truly productive relationship to be developed the precise basis of the working arrangements i.e. statutory or a formal MoU, is of secondary importance.
- c) The MoU got off to a bad start for a variety of reasons. From the beginning both parties were themselves uncomfortable with this basis of working and believed the other party felt the same. When the MoU was introduced, little time or effort was put in purely to establish a constructive working relationship between the two parties.
- d) The social policy scene is now far more wide-ranging than when SSAC and DWP could encapsulate all "social security" regulation within their discreet remits. Social policy developments moved some pieces of what had been DWP responsibilities to IR and then the new tax credit scheme firmly established HMRC alongside DWP as joint deliverers of state financial provision to individuals at various stages of their lives. SSAC's role as an independent knowledgeable body, with an overview of legislative developments that impact upon individuals who are entitled to financial assistance from the state, would require it to relate to HMRC too.
- e) There is a strongly shared objective between HMRC and SSAC of producing social welfare regulations that not only deliver the policy intention but do so in a way that neither causes practical problems for the public affected by them nor have unintended consequences. A truly effective relationship between the two bodies would help achieve this goal.
- f) Members of the public should not be troubled with the detail of machinery of government changes or departmental boundaries. They want their

financial or personal affairs to run smoothly, no matter how many public agencies are involved.

- g) Compared with its levels of knowledge and expertise on wider social policy, benefits and pensions, SSAC as currently constituted is light on expertise in personal and small business taxation and in practical experience of tax credits. Its capacity to consider policy ideas, secondary legislation and public information proposals emerging from HMRC would be strengthened if this gap were to be filled.
- h) SSAC's Secretariat should be staffed from secondees from HMRC as well as DWP. Costs should be similarly divided. Not only would this help day to day business between SSAC and HMRC – it would clearly signal the qualitative change in the relationship.

34. Interviewees from SSAC and HMRC expressed some common points from their own perspectives.

35. Common Points from SSAC

- a) SSAC is an independent, statutory body. This firm basis has enabled it to maintain its relationship with DWP even when it has robustly challenged that Department's policies or proposed regulations. It is not a consultation or lobby group. Its members have considerable knowledge and experience of social policy and welfare regulation and its practical effects. It is proud of its reputation, particularly with Select Committees and DWP Ministers, for being a "critical friend", drawing constructive attention to potential problems and giving valuable endorsement wherever it can.
- b) The report on SSAC by the Work and Pensions Select Committee in 2002/03 and the DWP's Quinquennial Review in 2003 both paint a consistent and encouraging picture of its capabilities and potential. If SSAC indicates satisfaction with a proposed regulation Parliament can be reassured by the rigour of its review: conversely, serious concerns may well attract the attention of Members of both Houses.
- c) SSAC's good informal and formal relations with DWP Ministers assist both it and DWP officials in their joint working.
- d) The MoU's confidentiality restriction on SSAC was a new and unwelcome development for an Advisory Committee with decades of social policy and legislative experience. It has caused difficulties both for the Committee and individual members in relationships with bodies they have dealt with on an open but discrete basis for many years.
- e) The notice periods of a few days stipulated in the MoU and the absence of discussions about future policy ideas and perspectives severely reduce SSAC's potential to contribute effectively to the production of HMRC's policy, legislation and public information material. Questioning in the final stages is unlikely to be welcome by officials drafting legislation or public information material and it is frustrating for SSAC members.

- f) SSAC members find the respective roles of HMT and HMRC unclear, whereas the relationship within DWP between policy, operational delivery and Ministers is well known and transparent.
- g) SSAC's programme of visits to DWP and its Agencies' operational sites are of great benefit to its consideration of proposed secondary regulation and public information. Visits to HMRC operational sites have never taken place. An equivalent extension of the DWP visiting arrangement would be of great help to the Committee's understanding of HMRC's responsibilities.

36. Common Points from HMRC

- a) SSAC is one of many bodies HMRC consults as it formulates regulations and public information material. Its unique selling point is not clear to many of the HMRC officials who have had dealings with it. In that context, the requirement to work with SSAC on a formal basis caused some concern in 2004.
- b) At the time the MoU had been drawn up HMT Ministers had required the confidentiality agreement. A subsequent analysis of its practical effects had concluded it was not essential, clearing the way for it to be considered as part of the MoU's Review.
- c) SSAC's working methods were unfamiliar to HMRC officials and were clearly a model which had been refined with and for DWP. For example the timetables generally associated with the Budget cycle put particular pressures on HMT and HMRC which are not explicitly recognised in the current MoU.
- d) Although Child Benefit, NICs and Guardian's Allowance had come to HMRC from DWP because of a machinery of government change, the new tax credits system was an integral part of the personal taxation scheme: SSAC's involvement with it was more arguable.
- e) SSAC often seemed to assume HMRC was responsible for policy and did not appreciate the Policy Partnership with HMT.

EVALUATION OF EVIDENCE

The SSAC/HMRC Relationship

37. The experience of trying to work within a professional relationship which has seemed dysfunctional from the start has resulted in interviewees from both SSAC and HMRC expressing opinions in emotive language at the beginning of any discussions. Observers of the procedure talked in similar terms. However, by the end of an interview constructive comments were volunteered by just about everyone: as were more dispassionate explanations for past problems or difficult incidents.
38. The previous informal working relationship had not required either IR or SSAC to fully explore the other's history, culture, role and expectations: such basic knowledge was deficient on both sides, notwithstanding that the shift of responsibilities had brought some DWP staff over to HMRC. No particular effort had been made to allow for this situation when the MoU was introduced and an entirely new formal relationship commenced. Neither had HMRC officials had any specific discussions with their DWP opposite numbers to explore the apparent effectiveness of the SSAC/DWP relationship. Two or three HMRC interviewees commented that they would be interested in learning how this worked in more detail.
39. With the benefit of hindsight, once the MoU had been signed, some time and effort at getting it off to a good start would have been well worthwhile. A special meeting between SSAC and the principal HMRC officials who would be working with it, to work out how and why the new arrangement should be made to work well would have been if concerns and misconceptions were to be overcome. Straightforward statements by both parties of what was going to be done were never going to create the required basis of trust and understanding, given the less-than-ideal starting point.
40. With the introduction of the Policy Partnership between HMT and IR in late 2004, SSAC was in effect working with three Government Departments on three different bases. This development hasn't yet been fully explored and appreciated. It has led to difficulties between HMRC and SSAC, based on misunderstandings by both parties.

The Key Role of HMT Ministers

41. The key factor in determining the success or failure of a working relationship between SSAC and HMRC/HMT seems to be the degree of commitment shown by HMT Ministers and HMRC and HMT senior officials. Crucially, HMT Ministers are keen to see and benefit from a constructive SSAC/HMRC/HMT relationship. The long-established model of the DWP/SSAC way of working involving the regular involvement of Ministers is an optimum, pragmatic relationship. It is of course statutorily based, but is consistently reported as providing value to DWP Ministers and officials and professional satisfaction to SSAC members.

42. HMT Ministers could helpfully give some explicit encouragement to the next phase of the SSAC/HMRC/HMT MoU to confirm their acknowledged commitment to it and recognition of its potential value. Specifically, it is recommended that HMT Ministers look at the practicalities of DWP's Ministers' interactions with SSAC and consider the scope for adopting at least some of these, given their evident success.

The Future of the MoU

43. The current MoU, while perfectly adequate in many ways, emphasises the letter of the law rather than invoking its spirit. It would not take much to remove this negative impression and transform the MoU into a constructive basis for working. Emphasis on the jointly-desired outcome would be a good starting point. There is plenty of evidence that both SSAC members and HMRC officials have complementary motivation and would value an arrangement that contributes to their shared objective.

44. At the time the MoU was introduced, SSAC, the Work and Pensions Select Committee and SSAC's Quinquennial Review had all strongly advocated extending its statutory responsibilities to cover IR business. Although some interviewees understandably still regard this as the ideal option, the impracticality of attempting primary legislation and the acceptance that – given the right spirit – a good working relationship doesn't require a statutory basis convinced nearly all interviewees that this is neither a viable nor essential proposition now.

45. Accordingly it is recommended that some swift and enthusiastic work by SSAC and HMRC to produce an amended MoU that they and (to an appropriate extent) HMT are happy to work with is undertaken within three months i.e. August 2008. The formal arrangement an MoU affords is definitely required: the scale and significance of the business relationship couldn't be properly protected without it. A speedy and constructive joint effort to agree such an MoU will go a long way to dispel existing tensions and misunderstandings.

The Confidentiality Arrangement

46. The confidentiality arrangement in the existing MoU has caused great difficulties for SSAC (both as a Committee and for its individual members) and mystification for most other parties. Its intention was recognisable at a time when tax credits policy and regulation was brand new, evolving and highly contentious. But as the years have elapsed it seems to have crystallised into a problem, rather than a solution. There are now indications that will not be sustainable for much longer.

47. First, the Child Poverty Action Group (CPAG) lodged a Freedom of Information request in January 2006 for copies of SSAC's advice and/or reports to HMRC on certain draft regulations. Following its rejection by both SSAC and HMRC, CPAG put their case to the Information Commissioner. His investigation has apparently now started. Agreement to the request would mean it would be hard to see how the existing confidentiality arrangement can be maintained.

48. Second, if SSAC chose to opt out of the MoU it would be free to comment openly on HMT/HMRC proposals whenever these came within its ambit. Such comments might well be supportive and uncontentious even if critical, as an earlier analysis by HMRC of SSAC's advice and DWP's long experience has confirmed. Specific additional arrangements to ensure confidentiality around sensitive policy discussions can be agreed with SSAC - or on an ad hoc basis if necessary - mirroring the procedures that DWP and SSAC operate. Therefore it is recommended that the current confidentiality arrangement be removed from the MoU.

The Widening Social Policy Agenda

49. The Welfare to Work and Child Poverty social policy agenda now involves of a number of Departments. Among them are the Ministry of Justice; Department of Health; Department for Children, Schools and Families and the Department for Communities and Local Government. SSAC increasingly needs to be aware of policy proposals and legislative developments in these Departments too, and the days of its exclusive relationship with DWP are long past. In these circumstances, and despite its now outmoded title, it is not a novel or contentious concept for SSAC and HMRC/HMT to be in a formal, constructive relationship. Indeed, this is how the end-recipients of all the relevant regulation will be best served and they are therefore entitled to expect it. Therefore it is recommended that HMT should sign up to the revised Memorandum in an appropriate way, to enable effective policy dialogue.

50. SSAC are already used to calling mixed teams of officials to discuss policy ideas or legislative proposals, so routinely considering asking DWP, HMRC and, when appropriate, HMT officials to meet them is only a natural extension. It would serve to reinforce the maturing relationships between the three departments too as well as strengthening SSAC's links with HMRC generally and clarifying their appreciation of the HMT/HMRC Policy Partnership.

SSAC's Potential Value to HMRC and HMT

51. As well as its most obvious claims to be an additional resource for HMRC (the knowledgeable "critical friend" and the wide experience of cross-Whitehall policy plans and their practical effects), SSAC can offer two further benefits from an effective relationship. Both can be verified from the SSAC/DWP relationship.

52. First, if SSAC endorse proposed regulations then the clear evidence from DWP Ministers, officials and the Work and Pensions Select Committee is that this carries considerable weight during the parliamentary scrutiny process. This is a prize that HMRC might well think is worth claiming whenever it is available.

53. Second, avowedly using SSAC's role as an independent, objective adviser that has close contacts with a range of lobby groups and representative bodies might help HMRC manage its direct consultation with these groups.

There is clearly a balance to be struck here, but HMRC might well find there was scope for rationalisation and the judicious use of SSAC's opinion to close off long-running arguments or to balance conflicting requests.

Enhancing SSAC's Expertise

54. SSAC would significantly enhance its ability to encompass HMRC's responsibilities if it strengthened its personal and business tax expertise and direct experience of tax credit practicalities. This is something that should be addressed quickly but there are logistical problems. SSAC's current statutory constitution precludes a straightforward increase and no vacancies are due for some time. However, legal advice from both DWP and HMRC confirms there is scope for extra-statutory alternative solutions: the following idea is one obvious option and is presented accordingly.
55. It is recommended that SSAC, HMRC and HMT create, on a non – statutory basis, an Advisory Group for SSAC on relevant tax issues. Members of the group would play a part in all SSAC meetings wherever their expertise is required, though they could also work separately or with a smaller group of SSAC members if this would be useful. Three or - at the most – four such people could be appointed. It would be most important that they demonstrably commanded the same level of professional and political respect as current SSAC members. A working title is SSAC's Tax Advisory Group.
56. HMRC and HMT would be the prime source of nominations for this Advisory Group, whose appointments must nevertheless follow procedures that comply with the Code of Practice of the Office of the Commissioner for Public Appointments. Terms and conditions would need to be agreed between HMRC and SSAC. They should be commensurate with, but not necessarily identical to, those for SSAC members. Full details would be covered in the revised MoU. As opportunities arise, candidates with the relevant expertise could be targeted when future opportunities to SSAC are made. Consequently the need for a special Tax Advisory Group for SSAC would eventually disappear.
57. As an additional way of rapidly increasing the whole Committee's knowledge and experiences of HMRC's responsibilities, it is recommended that, noting the considerable benefits DWP and SSAC ascribe to the visits members of the Committee make to DWP's operational sites, this facility should be extended to allow SSAC members to visit HMRC operational sites. Any essential differences in practice, e.g. around taxpayer confidentiality, would need to be catered for.

The SSAC Secretariat

58. With this extension of SSAC's overarching interests beyond DWP, the arrangement that this Department alone provides for all the staff and costs of the Secretariat should be modified appropriately. Models for such shared responsibilities exist in the Ombudsman's, Adjudicator's and Independent Case Examiner's Offices. The precise details can be agreed

between the two Departments (because of its size and structure HMT are unlikely to contribute), but it is recommended that HMRC should henceforth provide some of the SSAC's Secretariat staff. The Secretary's post has been filled by an open competition across Whitehall. In future, HMRC should ensure it encourages suitably qualified candidates to apply for this post in the same way that DWP does so that the job might rotate between the two departments. Encouragingly, during the Review a vacancy in the Secretariat arose and, with the agreement of SSAC's Chairman, HMRC were making active efforts to fill it.

59. Additionally, an extra post could be created for approximately 12 months, to establish effective links between SSAC and HMT/HMRC. This has the potential to result in an increase in joint business e.g. on HMRC's public information material, as well as supporting the achievement of an optimal working relationship between the three organisations. The degree of autonomy involved and the skill set required would make this an obvious assignment for an experienced member of the HMRC fast-stream or Management Fast Track.
60. Given the part-time nature of SSAC's membership, in practice the Secretariat has considerable delegated authority to select or screen referrals to the Committee; advise on areas where SSAC might like to initiate enquires and construct the agendas for its meetings. Given a broadening of its relationship with HMRC, it would be helpful if these arrangements and their boundaries could be clearly defined for all parties.

TAKING THINGS FORWARD

Establishing a constructive working relationship

61. Despite the frustrations associated with the working of the current MoU, both SSAC and HMRC interviewees gave strong indications that a fully functional arrangement would bring benefits to both parties and their shared objectives. Given this encouraging basis and the desire of HMT Ministers to have a productive SSAC/HMRC relationship, it will be well worth investing some time and effort into devising and implementing an amended MoU in the best possible spirit. Shared understandings; agreed procedures; clear accountability and arrangements that support open, constructive business transactions should be its basis. It should be jointly produced as a matter of urgency. The principle contributors to their MoU would obviously be SSAC, HMRC, and HMT, but they should call upon DWP's experience too.
62. Moving on in this way from a working relationship that has had difficulties is a challenge that organisations can easily underestimate. It is therefore recommended that a short, professionally facilitated initiative with some explicit timescales and agreed output would be a tried and tested way for SSAC and HMRC to tackle the issue. Professional facilitators with an understanding of the cultural issues and an appreciation of inter-Departmental and statutory constraints would be required. There are several providers of such assistance around Whitehall, some with specific DWP and HMRC experience.
63. Professional support both separately and jointly for SSAC and HMRC to finalise a replacement MoU would be a positive start to the initiative and it should be commissioned quickly i.e. by the end of May. This timescale would capitalise on any positive momentum this Review has generated and enable the MoU to be produced rapidly – something that was strongly commended by many contributors: a three month timescale should be readily achievable especially.

Producing some practical benefits

64. Apart from a revised MoU, another useful output from this facilitated work would be one or two jointly commissioned projects that would produce practical benefits. Small groups of SSAC members and HMRC and DWP officials should tackle issues that would bring quick wins for future policy and regulation developments. This idea was suggested by two or three interviewees who came up with an investigation of the “definitions” used by DWP and HMRC as an initial topic: it received wide support.

Reviewing the revised MoU

65. Even if all this work goes as smoothly and effectively as all parties would wish, it is unlikely that the perfect working arrangement between HMRC/HMT and SSAC will be settled at this first iteration of a new MoU. Its practical application over time is doubtless going to identify areas that could be modified in order to deliver the most valuable outcomes.

Accordingly, it is recommended that after 12 months the new MoU is reviewed by all three parties, with a contribution from DWP. The twin aims should be to identify:-

- a. further improvements in the way HMT/HMRC make use of SSAC's potential contribution to their development of legislation and public information; and
- b. how SSAC's statutory responsibilities with DWP might be enhanced by its work with HMRC/HMT.

The timescale for further reviews can be agreed within this first exercise.

ANNEX A

MEMORANDUM OF UNDERSTANDING BETWEEN INLAND REVENUE AND THE SOCIAL SECURITY ADVISORY COMMITTEE

Introduction and purpose

This document sets out the agreement between the Inland Revenue (IR), on behalf of Treasury Ministers, and the Social Security Advisory Committee (the Committee), under which the Committee will be invited to comment on matters within the Department's responsibility and to provide advice to Treasury Ministers. It describes the working arrangements between the Department and the Committee for the review of draft secondary legislation, information products and the provision of advice.

The Government's response to the recommendations of the Work and Pensions Select Committee (published as Cmd 6190) and the Secretary of State for Work and Pensions' response to the report of the Quinquennial Review of SSAC (published as Cmd 6189) agreed that it was important to maintain the principle of having an expert independent body to provide advice across the range of benefit and tax credit issues, but took the view that it is not necessary or appropriate to take new statutory powers. Instead, the Government made a commitment to establish a non-statutory arrangement for SSAC to provide advice to Treasury Ministers on a confidential basis. This Memorandum puts this commitment into effect.

Policy areas covered by the Memorandum

The memorandum covers the following policy areas:

- Tax Credits (Child and Working Tax Credit);
- Child Benefit and Guardian's Allowance; and
- Aspects of policy on National Insurance Contributions that affect benefit entitlement.

Coverage

The Committee will provide specific advice to Treasury Ministers and IR on

- proposals for regulations relating to
 - Child and Working Tax Credit
 - N.I contributions so far as they affect entitlement to contributory benefits; and
 - Child Benefit, Guardians Allowance.

The Committee will also provide advice on draft information products on request and may offer advice to Treasury Ministers on policy matters and public information strategies in relation to tax credits, Child Benefit or Guardian's Allowance, on request or where they feel it appropriate. The Committee's advice will be provided in confidence.

Referral of draft regulations

Where possible, IR will advise the Committee Secretariat of proposed regulations in the areas covered by the memorandum for the next [6 months] and send the Secretariat relevant regulations for consideration.

The Committee will determine which regulations they will offer advice on. Regulations will be selected for scrutiny and advice based on the following criteria:

- They relate to significant policy changes
- There are substantial financial effects on claimants
- There is a close fit with, or implications for social security benefits

The Secretary will, with the advice of Inland Revenue officials, and in consultation with the Chairman, select regulations that meet the criteria for Committee scrutiny.

The Committee Secretariat will inform IR which regulations the Committee wish to examine in detail and will commission full information from IR to an agreed timetable in the form of an Explanatory Memorandum, where this has not already been provided.

IR officials will attend Committee meetings on request to provide further explanation, if necessary.

The Committee may suggest that IR seek the views of other organisations whose input they believe would be valuable.

IR will normally give the Committee a minimum of 12 working days from the date the regulations are selected for scrutiny to consider draft regulations. Unless agreed otherwise, the Committee will respond in confidence to Treasury Ministers through IR, in a written report within the agreed period for comments.

IR will respond to the Committee on behalf of Treasury Ministers on points of substance arising from their comments that Ministers are unable to accommodate.

Arrangements will be made by agreement for the handling of sensitive or urgent regulations.

Referral of draft information products.

The Committee will have the opportunity to review and comment in confidence on draft information products, such as leaflets and codes of practice on tax credits, Child Benefit and Guardian's Allowance and on substantive amendments to them.

Unless, exceptionally, a shorter time has been agreed, IR will provide the Committee with a minimum of 20 working days in which to comment on drafts of information products.

IR officials will respond to the Committee on points of substance arising from their comments that they are unable to accommodate.

Policy advisory role

The Committee will provide advice in confidence on matters of policy in relation to tax credits, Child Benefit or Guardian's Allowance at the request of HMT Ministers or IR officials. Based on briefings or discussions with IR, the Committee may also offer advice on their own initiative where they believe it would be helpful.

The focus for the Committee's advice will be policy matters and information strategies. In particular, they will consider the impact of proposals on customers, especially where people are customers of both IR and DWP, with the aim of promoting good customer service and, so far as appropriate, consistency of approach.

Confidentiality

The Committee will not make public any comments or advice that they provide to Treasury Ministers, nor the responses they receive, without express permission to do so.

In providing advice to DWP Ministers in relation to DWP benefits, the Committee may refer to the approach adopted by IR in a similar area. Such advice remains advice to DWP Ministers and will either be published under statutory requirements or released in line with DWP and SSAC publication schemes. The Committee Secretariat will make IR aware that advice has been provided which cross-refers to IR matters.

Committee's Annual Report

The Committee's Annual Stewardship Report will list all draft regulations and information products put to the Committee secretariat for potential scrutiny and advice and will separately list those regulations and products that were subject to scrutiny by the Committee itself.

The Committee may also note in their report the policy areas on they have provided advice in the previous 12 months.

The Report may include a commentary about the operation over the year of the Memorandum of Understanding.

The Committee should allow IR 12 working days to comment on the wording of proposed entries in the stewardship report.

Minutes of Committee meetings

For the purpose of Committee minutes, all discussions relating to matters which are the responsibility of Treasury Ministers will be briefly minuted and treated as reserved items.

Explanatory Memoranda, written advice and other correspondence from the Committee will be owned by IR but advice and correspondence will not be released in any form without agreement from SSAC.

Monitoring, evaluation and review

The arrangements will be monitored by IR and SSAC to:

- ensure the Memorandum is being adhered to;
- ensure that the process and role adds value and is operating well; and
- with a view to making improvements.

Either Inland Revenue or the Committee can initiate a review at any time if they feel the arrangements are not working. The Department for Work and Pensions will be invited to comment in any review on any aspects of the arrangements that have had an effect on their own areas of responsibility.

SIGNED BY:

.....
DAVE HARTNETT, CB
DEPUTY CHAIRMAN
INLAND REVENUE

.....
SIR THOMAS BOYD-CARPENTER, KBE
CHAIRMAN OF SOCIAL SECURITY
ADVISORY COMMITTEE

DATED: WEDNESDAY, 21 JULY 2004.

ANNEX B

INTERVIEWEES

SSAC

Sir Richard Tilt	Chairman
Alison Garnham	Member
Angus Erskine	Member
Professor Anthony Ogus	Member
Brigid Campbell	Member
Professor Elaine Kempson	Member
Professor Janet Walker	Member
Kwame Akuffo	Member
Laurie Naumann	Member
Les Allamby	Member
Pat Smail	Member
Richard Excell	Member
Professor Robert Walker	Member
Simon Bartley	Member
Gill Saunders	Secretary
Sir Thomas Boyd-Carpenter	Former Chairman of SSAC

HMRC

Dave Hartnett	Acting Chairman
Michael Hanson	Director General, Benefits and Credits
Sarah Walker	Director, Benefits and Credits Directorate
Tracy Gale	Assistant Director, Tax Credits Policy, Technical and Compliance
Nigel Jordan	Assistant Director, Tax Credits and Child Benefit Process
David Skinner	Policy Advisor, Tax Credits Overpayments
Sam Mitha	Assistant Director, Tax and NICs
Jenny Fox	Policy Advisor, Child Benefit and Guardian's Allowance
Kate Owen	Non-Executive Director, HMRC Board
Gerald Thirkell	Benefits and Credits Advisory Team, Solicitors Office

HMT

The Rt Hon Jane Kennedy MP	Financial Secretary to the Treasury
Mike Williams	Director, Personal Tax and Welfare Reform

DWP

James Plaskitt MP	Parliamentary Under Secretary of State, Department for Work and Pensions
Phil Wynn Owen	Director General for Strategy, Information and Pensions
Mark Aldridge	Team Leader, Pensions Protection and Stewardship Division
Catherine Davidson	DWP Legal Group
Norman Cockett	Former Secretary of SSAC

WORK AND PENSIONS SELECT COMMITTEE

Terry Rooney MP	Chairman of the Work and Pensions Select Committee
Lord Kirkwood of Kirkhope	Former Chairman of the Work and Pensions Select Committee

EXTERNAL STAKEHOLDERS

John Andrews	Chairman, Low Income Tax Reform Group
Kate Green	Chief Executive, Child Poverty Action Group
Theresa Perchard	Director of Policy, Citizens Advice Bureau