EXPLANATORY MEMORANDUM TO

THE TRANSFER OF TRIBUNAL FUNCTIONS AND REVENUE AND CUSTOMS APPEALS ORDER 2009

2009 No.

1. This explanatory memorandum has been jointly prepared by HM Revenue and Customs (HMRC) and the Ministry of Justice (MoJ) and is laid before the Houses of Commons and Lords by Command of Her Majesty.
The memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

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

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

3.1 Type of resolution

3.1.1 The draft Order is subject to the affirmative resolution procedure and must be approved by both Houses of Parliament.

3.1.2 The Order is jointly made by the Lord Chancellor and the Treasury in exercise of the powers granted by the TCEA, and the Finance Act 2008 (FA 2008).

3.1.3 The Order amends primary and secondary law.

4. Legislative background

4.1 General

4.1.1 TCEA section 146 and Schedule 23 part 1 provide for the abolition of the offices of the Commissioners for the general purposes of the income tax. These provisions have been brought into effect from 1 April 2009 by article 6 of The Tribunals, Courts and Enforcement Act 2007 (Commencement No. 6 and Transitional Provisions) Order 2008 (SI 2008/2696).

4.1.2 This draft Order is made under sections 30(1) and (4), 31(1), (2) and (9) and 38 of, and paragraph 30 of Schedule 5 to, the TCEA, and section 124 of FA 2008.

4.1.3 The Order makes legislative changes to transfer the functions of the four existing tax tribunals to the tribunals established under the TCEA, abolish existing tax tribunals other than the General Commissioners and consequentially amend tax and other enactments. These provisions are made under the TCEA vires.

4.1.4 It also makes changes to legislation governing the administration by HMRC of appeals against tax decisions. The changes streamline HMRC's administration of tax appeals and introduce an optional statutory review of appealable decisions. These changes are made under the powers conferred by section 124 of FA 2008.

4.1.5 HMRC and MoJ officials have worked closely together so that development of the new tax tribunal procedures and HMRC appeals administrative changes are aligned. If Parliament approves, the Order will come into effect on 1 April 2009, so that the new unified tax tribunal and HMRC's administrative changes will come into effect at the same time.

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

4.2 EU legislation

4.2.1 This instrument does not implement EU legislation.

5. Territorial extent and application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord Chancellor (Jack Straw) and the Financial Secretary (Stephen Timms) have made the following statement regarding Human Rights.

6.2 In our view the provisions of the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 are compatible with convention rights.

7. Policy background

7.1 Tribunal reform

7.1.1 The TCEA received Royal Assent on 19 July 2007. It provides for a new judicial and legal framework for appeal tribunals with a clearly independent judiciary under a Senior President, and creates a single two-tier national tribunal structure.

7.1.2 The new tribunal will be sub-divided into Chambers, both in the First-tier and Upper Tribunal. There will be a Chamber in the First-tier that will consider most first instance appeals against tax decisions. Appeals against the determination of the First-tier Tribunal will be heard in the Upper Tribunal. A small number of cases involving complex legal argument may exceptionally be heard by the Upper Tribunal at first instance.

7.1.3 The policy intention behind the TCEA 2007 is to provide a better quality service through the development of more coherent and consistent procedures across tribunals. This will also support more flexibility in the deployment of existing judiciary and improved judicial career paths. The new tax chamber will operate with one set of rules for all tax regimes. The tribunals will be manifestly independent of decision-making Government departments.

7.1.4 The MoJ issued a consultation document 'Transforming Tribunals – Implementing Part 1 of the Tribunals, Court and Enforcement Act 2007' on 28 November 2007: the Government's response was published on 19 May 2008. Consultation responses supported a new unified Tax Chamber, with cases heard by a unified professional judiciary and administrative support provided by the Tribunals Service.

7.1.5 The Tribunal Procedure Committee commenced consultation on tribunal procedure rules for the First-tier Tax Chamber and the rules for tax in the Upper Tribunal on 20 August 2008: the consultation closed on 12 November.

7.2 HMRC administrative changes, including internal review

7.2.1 HMRC's administration of appeals against tax decisions reflects developments over time, differences in the structures of the taxes concerned and the different approaches of the two former departments, the Inland Revenue and HM Customs and Excise. Since the merger of these Departments HMRC has been working to align and modernise the administration of appeals where it is sensible to do so.

7.2.2 Against this background, HMRC published a consultation document "HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC" on 9 October 2007. The consultation sought views on implementing a more consistent approach to internal review across HMRC, possible alignments of administrative matters and transitional arrangements.

7.2.3 Consultation responses overwhelmingly supported the introduction of an optional statutory review process which enables taxpayers to choose whether or not to have an internal review of disputes.

7.2.4 HMRC published a response document "HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC: Summary of Responses and Future Direction" on 12 March 2008. In the document the Government announced the introduction of the optional

statutory review process and also that the Government would streamline appeals handling and proceed with other proposals set out in the consultation document.

7.2.5 The adoption of a common policy on review across HMRC's tax business is intended to provide clearer safeguards for taxpayers who dispute HMRC decisions and to help ensure the tribunal is not burdened by cases which could have been resolved by review. Important benefits include:

- making HMRC action in reviewing decisions more transparent for taxpayers;
- helping assure quality and consistency in HMRC decision making;
- helping ensure that as many disputes as possible are resolved informally, without the expense or anxiety of a hearing;
- helping achieve the HMRC aspiration to improve communication and to be more open in its dealings with taxpayers.

7.2.6 Section 124 of FA 2008 enables the implementation of review and other changes to be made in a statutory instrument which will also contain changes made under powers in the TCEA.

7.2.7 Subject to Parliamentary approval it is expected that tax appeals will transfer into the new tribunal structure on 1 April 2009.

7.2.8 Further details of the proposed legislative changes are annexed to the memorandum.

8. Consultation outcome

8.1 An early draft of this Order was published on 02 June 2008 with an accompanying Technical Document. The draft contained changes to the Taxes Management Act 1970 as the model for changes to direct tax provisions and changes to FA 1994 and VATA 1994 as the model for indirect tax changes. Paragraphs 2.7 and 2.8 of the Technical Document made it clear that these changes would be applied to the other direct and indirect tax regimes and invited comment on this basis.

8.2 To coincide with the publication of the draft Order HMRC has published a separate document "HM Revenue and Customs and the Taxpayer: Tax Appeals against decisions made by HMRC: Summary of Technical Responses" summarising the comments made and responding to them. This document is available from the HMRC website.

8.3 Six written responses were received and 3 meetings held with attendees from 18 representative bodies and professional firms. In addition, some of the issues raised were discussed at the MoJ's Tax Appeals Modernisation Stakeholder Group.

8.4 Most of the comments related to the proposed review process. Responses again welcomed the statutory but optional approach adopted and concentrated on ensuring that review was robust and in particular that it contained sufficient legislative safeguards.

8.5 In response to this, the revised review provisions contain additional safeguards: these include extending appeal time limits where HMRC notify review conclusions later than intended; the provision of reasons for HMRC's review conclusions; and for review to apply in relation to all appealable matters. (Paragraphs 3.12 to 3.49 of the summary of technical responses refer.)

8.6 There were also a number of different views on how best to distinguish between the two stages of the direct tax appeal process, in particular how to cater for the stage at which the appeal is being considered by HMRC but is not within the jurisdiction of the tribunal.

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

9. Guidance

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

10. Impact

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

11. Regulating small business

11.1 The changes apply to small business.

11.2 The General Commissioners hear cases very locally, at over 400 locations, and this will end with the abolition of the GCITs. Some small businesses may need to travel further to attend a hearing, and to minimise this impact video conferencing and local hires of venues will be used where appropriate. There will be around 130 Tribunal Service venues across the UK, which gives reasonable geographical coverage, and a more consistent standard of accommodation with suitable facilities for people with special needs (many of the current locations are not easily accessible). In addition, the new default paper track for relatively straightforward appeals will mean that attendance is not required in many cases (although parties will have a right to a hearing if they wish). The new tax appeals system should be of benefit to business in the longer term.

11.3 The introduction of optional statutory review in HMRC is expected to produce benefits for small businesses in cases where review avoids the need for litigation. As the review and appeals processes provide safeguards for customers, it would be wrong to exclude small firms. Representative bodies and agents of small firms were invited to take part in the HMRC consultation on review. Agents said they would recommend use of the review process to small firms and expected them to benefit.

12. Monitoring and review

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

13. Contacts

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

Tel: 020 7147 2405

Email: eileen.rafferty1@hmrc.gsi.gov.uk

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

Tel: 020 7566 1285

Email: bryan.pay2@tribunals.gsi.gov.uk

GENERAL

Overview of the draft Order

The draft seeks to achieve the following:

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

NOTES ON DETAIL

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

ARTICLE 1 – Citation and commencement

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

ARTICLE 2 – The existing tribunals

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

ARTICLE 3 – Transfer of functions, consequential and other amendments

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

ARTICLE 4 – Abolition of existing tribunals

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

ARTICLE 5 –Transfer of members of existing tribunals

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

ARTICLE 6 – Transitionals and savings

Schedule 3 contains additional transitional and saving provisions.

SCHEDULE 1

Consequential amendments and supplemental provisions - primary legislation.

Stamp Act 1891

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

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

Taxes Management Act 1970

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

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

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

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

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

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

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

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

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

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

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

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

Review

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

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

Section 49B (Appellant requires review by HMRC)

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

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

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

Section 49C (HMRC offer review)

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

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

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

Section 49D (Notifying appeal to the tribunal)

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

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

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

Section 49E (Nature of review, etc)

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

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

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

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

Section 49F (Effect of conclusions of review)

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

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

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

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

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

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

Section 49I (Other interpretation)

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

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

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

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

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

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

Oil Taxation Act 1975

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

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

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

Inheritance Tax Act 1984

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

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

Income and Corporation Taxes Act 1988

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

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

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

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

Finance Act 1994

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

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

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

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

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

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

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

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

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

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

Section 15 (review procedure) is consequentially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Value Added Tax Act 1994

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

Section 83A (Offer of review)

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

Section 83B (Right to require review)

This section provides that any person (other than P) who has a right of appeal under section 83 against an HMRC decision may require a review or serve notice of appeal within 30 days of the date when that person becomes aware of the HMRC decision. Case law has determined that any person with sufficient interest in a VAT decision (such as the recipient of the supply in question) has the right to appeal that decision. This section provides for these parties to require a review and clarifies the process for doing so.

Section 83C (Review by HMRC)

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

Section 83D (Extensions of time)

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

Section 83E (Review out of time)

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

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

Section 83F (Nature of review etc)

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

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

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

Section 83G (Bringing of appeals)

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

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

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

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

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

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

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

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

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

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

New section 85A (Payment of tax on determination of appeal) restates section 84(8) with modifications. The modifications remove the power of the tribunal to decide the rate at which interest is payable on any

amounts found to have been over- or underpaid on determination of the appeal and provide instead that interest will be payable at the normal statutory rates.

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

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

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

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

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

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

decide how much, if any, of the disputed amount should be paid or repaid; or

require the provision of adequate security; or

stay the requirement to pay or repay under subsection (1) (subsection (6)).

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

Finance Act 1996

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

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

Finance Act 1998

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

Finance Act 1999

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

Finance Act 2000

Schedule 6 (climate change levy: review and appeal) is amended to reflect the transfer of tribunal functions and to replace the current mandatory review provisions with a right to a review (paragraphs 99and121 - 123). Interest will be payable at the normal statutory rate on amounts found to be overpaid or underpaid in consequence of appeal determinations. Section 85B of VATA will apply to climate change levy appeals as it does to VAT appeals.

Finance Act 2001

Sections 40-42 (aggregates levy: review and appeal) are amended to reflect the transfer of tribunal functions and to replace the current mandatory review provisions with a right to a review. Interest will be payable at the normal statutory rate on amounts found to be overpaid or underpaid in consequence of appeal determinations. Section 85B of VATA will apply to aggregates levy appeals as it does to VAT appeals.

Tax Credits Act 2002

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

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

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

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

Income Tax (Earnings and Pensions) Act 2003

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

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

Finance Act 2003

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

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

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

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

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

Income Tax Act 2007

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

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

SCHEDULE 2

Consequential Amendments and Supplemental Provisions – Secondary Legislation

Stamp Duty Reserve Tax Regulations 1986

Amendments are made to reflect the transfer of tribunal functions.

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

Social Security Contributions (Decisions and Appeals) Regulations 1999

Amendments are made to reflect the transfer of tribunal functions.

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

Export (Penalty) Regulations 2003

Amendments are made to reflect the transfer of tribunal functions.

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

Similar amendments are made to the following enactments:

Control of Cash (Penalties) Regulations 2007

Money Laundering Regulations 2007

Transfer of Funds (Information on the Payer) Regulations 2007

SCHEDULE 3 – Transitional and saving provisions

Overview

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

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

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

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

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

Paragraph 1: General

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

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

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

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

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

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

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

Paragraph 4: Former VAT and duties tribunals matters: VAT

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

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

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

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

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

Paragraphs 6 and 7: Current proceedings

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

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

Additionally, for all proceedings continued before the new tribunal:

> Any direction or order given in proceedings and which is in force before the commencement date shall continue in force as if it were a direction of the First-tier Tribunal.
>
> A time period which has started to run before the commencement date and has not expired will continue to apply.
>
> An order for costs may only be made if, and to the extent that, an order might have been made before the commencement date.

Paragraph 8: Cases to be remitted by courts

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

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

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

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

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

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

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

Subparagraphs (3) to (6) enable the General Commissioners and clerks to continue to fulfil their obligations under TMA 1970 and the General Commissioners (Jurisdiction and Procedure) Regulations

1994 for the purpose of an application for a case to be stated, review, or correcting irregularities. Any such applications will be dealt with under the existing legal provisions.

Paragraph 12: Existing tribunals – staff

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

Paragraph 13: Saving provision

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

Summary: Intervention & Options		
Department /Agency: **Tribunals Service** **Ministry of Justice**	**Title:** **Impact Assessment of implementation of new unified Tax Appeals system**	
Stage: Implementation	**Version:** 05	**Date:** 26 November 2008
Related Publications: Transforming Tribunals, Response to Consultation, February 2007		

Available to view or download at:

http://www.financeandtaxtribunals.gov.uk/taxAppealsModernisation.htm

Contact for enquiries: Bryan Pay **Telephone:** 02075661285

What is the problem under consideration? Why is government intervention necessary?

The system of taxappeals has developed incrementally over many years and is quite fragmented. There are four different Tribunals with different structures, processes and procedures depending on the nature of the tax in dispute. This is anomalous, given HMRC is now a single department dealing with both direct and indirect tax. The General Commissioners of Income Tax (GCITs) system, although it has served us well for many years is now in need of modernisation. is not seen as manifestly independent. Reform of the tax tribunals is being taken forward by the Tribunals Service in MoJ , as part of wider tribunals reform under vires in the Tribunals Courts and Enforcement Act 2007.

What are the policy objectives and the intended effects?

The aim of the Tax Appeals Modernisation Project is the creation of a single, coherent, cost-effective and user-friendly tax appeals jurisdiction that meets the needs of all users. The tax appeals system must be capable of hearing the full range of direct and indirect tax cases, and must ensure continued good access to appropriate dispute resolution. The new unified system, with one set of rules, must be manifestly independent of HMRC and provide an independent and expert hearing of tax appeals by tribunal panels flexibly constituted to meet the needs of the individual case.

What policy options have been considered? Please justify any preferred option.

The options of a) do nothing, b) partial reform whereby GCITs are kept partly outside the system and c) the creation of a new, unified Tax Appeals system have been considered. The first option is affordable but goes against government agreed policy on tribunals reform. Option B was least expensive but did not fully meet reform objectives above in terms of consistent and coherent administration and the needs of users. There were also doubts about ability to partially maintain the GCIT system for any length of time. Option C meets the strategic aims of the TCE Act of a modern Tribunals Service, and the aims of tax tribual reform.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Implementation will be closely monitored and a we would expect review after an assessment of data gathered after the first year of operation of the new system.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Bridget Prentice

..... Date: 26/11/08

Summary: Analysis & Evidence	
Policy Option:	**Description:**

COSTS

ANNUAL COSTS	
One-off (Transition) **Yrs**	Description and scale of **key monetised costs** by 'main affected groups' The Tribunals Service will incur some transitional costs in setting up the new system. They may incur some costs from having to transit their cases direct to the new Tribunal, and a less localised hearing network. Innovations such as the Paper Track for cases will off-set these costs.
£ Not quantifiable	
Average Annual Cost (excluding one-off)	**Total Cost** (PV) **£Not quantifiable**
£ Not quantifiable	

Other **key non-monetised costs** by 'main affected groups' There will be some training and familiarisation costs for businesses and individuals from the new Tribunal, which will overlap with associated costs of learning the new HMRC internal review processes. HMRC/MoJ guidance and processes will be closely aligned

BENEFITS

ANNUAL BENEFITS	
One-off **Yrs**	Description and scale of **key monetised benefits** by 'main affected groups' There will be strong benefits for Tribunal users from more consistent rules and procedures across tax regimes, a unified Tribunals administration and more flexibility to ensure judicial panels constituted appropriate to the needs of the case.
£ Not quantifiable	
Average Annual Benefit (excluding one-off)	**Total Benefit** (PV) **£Not quantifiable**
£ Not quantifiable	

Other **key non-monetised benefits** by 'main affected groups'. There will be key benefits for different groups from the four procedural track approach being developed in Rules. Paper Track and Basic Track cases will preserve the informality of the General Commissioners where appropriate and fast-track, low cost means to resolve disputes for individuals and small businesses. Complex or high value matters will dealt with via Standard or Complex tracks.

Key Assumptions/Sensitivities/Risks The assumption in the analysis is no change to taxpayer behaviour in terms of their propensity to appeal to the Tribunal. The changes to the interface between the Tribunals Service and HMRC, and internal handling and review procedures may impact on appeal volumes. This is not quantifiable but will be very small. It will be kept under review and new system is flexible.

Price Base Year 2008	Time Period Years 1	**Net Benefit Range** (NPV) **£ Not quantifiable**	**NET BENEFIT** (NPV Best estimate)

What is the geographic coverage of the policy/option?			United Kingdom	
On what date will the policy be implemented?			1 April 2009	
Which organisation(s) will enforce the policy?			Tribunals Service,	
What is the total annual cost of enforcement for these organisations?			£ Not quantifiable	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ Not applicable	
What is the value of changes in greenhouse gas emissions?			£ Not applicable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of	£ Nil	Decrease of	£ Nil	**Net Impact**	**£** Nil
		Key:	**Annual costs and benefits:**		**(Net) Present**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Scope

This impact assessment (IA) considers the impact of introducing a new, unified tax appeals jurisdiction into the new two tier Tribunals structure. Tax appeals reform is enabled by the Tribunals, Courts and Enforcement Act 2007 (TCE Act), and implementation of Part 1 of this Act was accompanied by regulatory assessments available at www.dca.gov.uk/risk/tce_bill.pdf.

Those assessments concluded implementing the legislation was not likely to have an adverse impact on different groups of people, including minority groups. This assessment provides further, up to date detail, on the expected costs and benefits specifically in relation to Tax appeals, which is enabled by this legislation.

The implementation of tax appeals reform is enabled by the Transfer of Tribunal Functions and Revenue and Customs Order 2008. As well as abolishing the existing tax appeals tribunals and transferring their functions into the new structure, it also introduces concurrent changes to the way in which HMRC handle tax appeals prior to their reaching the Tribunal. Both sets of changes are being implemented simultaneously on 1 April. HMRC have prepared a separate IA on these matters, which is available to view at www.hrmrc.gov.uk/better-regulation/ia.htm.

Background

The Tax Appeals Modernisation Project has a long history and has been on the government agenda for some time. It is a distinct project which is being implemented now as part of the wider reform of the Tribunals system enabled by the TCE Act. Tax Appeals reform or modernisation is the merger of the current four separate tax appeals Tribunals into one single jurisdiction, with a common set of rules and business processes, and with all administration provided by the Tribunals Service.

The system of tax appeals developed incrementally over time and is widely seen as incoherent and fragmented. There are different judicial structures, processes and procedures depending on the nature of the tax in dispute. This is anomalous, given the formation of HMRC as a single department dealing with both direct and indirect taxation.

There are four separate Tax Tribunals.

- The General Commissioners of Income Tax. The General Commissioners of Income Tax are lay volunteers. There around 1800 GCITs; they who sit in local divisions and hear the bulk of straightforward appeals against HMRC on direct taxation (e.g. Income Tax). The Tribunals Service does **not** provide administrative services. The General Commissioners appoint Clerks who are paid fees to provide administrative support and legal advice.
- The Special Commissioners (Commissioners for the special purposes of the Income Tax Act) are legally qualified and deal with the more complex direct tax cases. The Tribunals Service provides their administration services.
- The Vat and Duties Tribunal includes legally qualified Chairmen and Members. They hear appeals against HMRC decisions in relation to indirect taxation, mostly VAT, excise and customs duties. The Tribunals Service provides their administration services.
- The Tribunals constituted under Section 706 of the Income and Corporation Tax Act 1988 (ICTA) and section 704 of the Income Tax Act 2007 (ITA). This sits infrequently and considers cases in relation to certain anti-avoidance provisions.

The system of General Commissioners of Income Tax, in particular, has come to be seen as increasingly outmoded. Their geographic structure is rigid and inflexible, based around over 400 geographic divisions, and their system of appointments no longer representative of the communities they serve. The present system for the listing of cases to the General Commissioners of Income Tax may give rise to a perception that the Tribunal is not manifestly independent of HMRC.

The reform of the Tribunals system was proposed by Sir Andrew Leggatt in his review of the tribunals system in 2001. He noted the tax appeals system, and in particular the GCITs cried out for modernisation. He proposed the abolition of the offices of the GCITs, and that their work along with the other three existing Tribunals be combined into one unified tax appeals system, which would deal with both direct and indirect taxation.

The Government agreed. It published its *White Paper Transforming Public Services: Complaints, Redress and Tribunals in 2004.* The TCE Act that followed provided the legislative mechanism to take forward Tribunals reform, including Tax Appeals modernisation.

This Order, the draft Transfer of Tribunal Functions and Revenue and Customs Order 2008 abolishes the existing Tax Appeals Tribunals and transfers their functions into the new Tribunals system. It also introduces changes to HMRC handling of appeals before they reach the Tribunal, which are subject to the separate RIA referred to above. The abolition of the offices of the General Commissioners of Income Tax has been taken forward via another Statutory Instrument, SI 2008/2696, which has already been made.

Policy Objectives and intended impacts

The policy aims are for a new, coherent and unified Tax jurisdiction with consistent procedures, and which will replace the current system. The intention is to create a Chamber in the First-tier that will consider most first instance appeals against tax decisions, with appeals against the decisions of the First-tier Tribunal heard in the Upper Tribunal. Tax is the second stage of transfer of existing jurisdictions into the new structure, with the establishment of the new system and the first transfers of existing tribunals into the new structure on 3rd November.

It is intended the new unified Tax jurisdiction will directly contribute to improving the level of service delivered to the public by the tax tribunals and will provide for a more manifestly independent, consistent and coherent tax tribunals system for users. The change should be particularly noticeable for users of the GCITs, who tend to be individuals and small businesses with relatively small disputes over tax.

A new and consolidated set of rules should mean the development of consistent processes and procedures appropriate to the nature of individual cases. This should contribute to the aim of improving the quality of tribunal services, and a more flexible deployment of judicial resources and improved judicial career paths. These aims link directly to the Ministry of Justice's objective to improve the way in which disputes over administrative decisions affecting individuals and disputes over employment rights are dealt with.

Consultation and Options

The Tax Appeals Modernisation Project works closely with an external Stakeholder Group. The Stakeholder Group is chaired by Sir Stephen Oliver QC, President of the Finance and Tax Tribunals. Membership includes representatives from HMRC, the Low Incomes Tax Reform Group, the Confederation of British Industry, the Association of Clerks and General Commissioners, the Law Society, the Institute of Chartered Accountants, the Chartered Institute of Taxation and other groups with a key interest in tax appeals.

The Stakeholder Group has contributed to key aspects of the design of the new Tax Appeals system, including a new costs regime for the new unified jurisdiction, and new Tax Rules. The ownership and making of the rules in the new system, however, is the responsibility of the judicial Tribunal Procedures Committee, although they are subject to the final agreement of the Lord Chancellor.

In November 2007, the Tribunals Service published a document called *Transforming Tribunals: Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007*. This included a specific

Chapter 11 on Tax Appeals Modernisation. The responses to the consultation supported a new Tax Chamber with a unified professional judiciary and administrative support provided by the Tribunals Service. There was strong support for continued local access to hearing centres, and for non-legal members to have an important role to play in the new system. The response to the consultation was published on 27 June 2008.

In parallel to this, the Tribunals Service considered three options for detailed reform of the tax appeals system. These were: a) implement a new, unified Tax jurisdiction, b) implement a hybrid system retaining the General Commissioners in a new Tribunals Service administration and c) Do Nothing. The options are appraised below:

Table 1: Option Appraisal

Option	Description	Appraisal Summary	Status
Option 1	Ex-GCIT work transferred into new Tax Chamber, and TS conducts all administration.	Achieves TCE Act aims and joins up with wider reform of Tribunals within the MoJ, and the strategic aim of a modern Tribunals Service. Hearings less localised than in the current system.	The preferred solution and now being implemented
Option 2	GCIT's as voluntary lay members continue to hear direct tax appeals, whilst TS conducts all administration.	Transfers existing General Commissioners into new administrative structures, including HMRC listing. Does not fully meet strategic aims of Tribunal reform and a modern Tribunals Service. Hearings less localised than in the current system.	Is the least expensive option, but does not adequately meet the reform objectives. There may be difficulties maintaining the system for a length of time.
Option 3	Do Nothing – Continue with existing GCIT regime where voluntary lay members hear direct tax appeal cases. These are listed by HMRC and administered (with legal advice) by fee-paid Clerks.	Does not achieve any TCE Act aims, nor the wider Tribunals Service reform within the MoJ. Very localised hearings remain, though variation in standard of accommodation.	Affordable, but no reform goes against government agreed policy around tribunal reform, and therefore discounted (included for comparison only)

Option 1 was the only option that would achieve the government's wider Tribunal reforms aim and a modern Tribunals service. The other two options did not achieve this goal and there were doubts as to the viability of retaining a system of volunteer General Commissioners alongside a professional judiciary. Key concerns were that the informality of the General Commissioners and local access to hearing centres be retained in the new system. How these concerns are addressed or mitigated is part of the analysis of costs and benefits is below.

Tribunal workflow: Data analysis

The costs and benefits analysis are based on the anticipated workload of the new, combined Tax Appeals system. The **Annex** sets out the data for the workload of the four existing Tribunals for 2006/07. This is based on a harmonisation of appeal data agreed between HMRC and the Tribunals Service. The tribunals received around 47,560 appeals and applications in 2006/07, of which a certain proportion proceeded to full hearing.

The workload of the Tribunal going forward will inevitably be more uncertain. There is an expectation of around 51, 700 cases reaching the Tribunal, including appeals arising from changes to the Construction Industry Scheme and the HMRC Powers Review. The categorisation reflects cases assessed as likely to be categorised as Paper, Basic, Standard or Complex cases in the new system. The assessment of which cases are which was developed on the basis of feedback from the Stakeholder Group.

The forecasts do not account for changes in appeals behaviour relating to deteriorating economic conditions. There could be an impact from a decline in the level of overall taxation in terms of people not exercising their appeal rights to the same extent.

The forecasts also do not account for any change in taxpayer behaviour arising from the impact of policy changes. Such changes include that in the new system the appellant is responsible for making their appeal to the new Tribunal directly. HMRC is also, at the same time, introducing new processes for handling of appeals prior to their reaching the Tribunal, and in particular (for direct tax) a new optional internal review. No account has yet been made of changes due to the current economic situation but this is now being reviewed.

We do not expect these to provide additional "incentive" factors for appellants to appeal more often to the Tribunal. Feedback from the recent HMRC consultation on changes to HMRC handling of appeals suggested most appellants would use the internal HMRC processes and seek to settle cases as now.

An aim of HMRC changes is that the vast bulk of cases continue to be quite easily settled by dialogue between the parties, and the Tribunal is not deluged by nugatory matters. Over 90% of "appeals" against direct tax decisions are settled without recourse to the Tribunals, most of which are straightforward and relatively simple administrative disputes appropriate for settlement prior to Tribunal.

Transitional factors may also mean a relatively slow build up of cases in the new system. There may be some localised incentives for settling cases prior to the 1 April implementation, and a relatively slow build up of caseload afterwards as parties engage the HMRC handling processes with their respective time-limits.

There are inherent uncertainties in estimating the precise impacts on Tribunal workload arising from behavioural changes in relation to a new system. The following analysis is therefore based on taxpayers pursuing their appeals rights very much as now, whilst accounting for forecast increases arising from changes to appeal rights.

Costs and Benefits

The users of the new, unified tax appeals jurisdiction will range from small individuals and businesses contesting smaller £100 late filing penalties, to those with complex cases that set important precedents, and large corporations contesting amounts over £10 millions.

There are a range of benefits for users arising from a manifestly independent tribunal, consistent procedures, structures and administration, and a unified, professionally remunerated judiciary. There are two areas of potential cost to users around their role in making their own appeal and local access to hearings, but these are off-set by mitigations set out below.

<u>Manifest Independence</u>

A key criticism of the GCITs is that HMRC controlled the listing of cases and their management to the Tribunal, so that it was not manifestly independent of the Department whose decision was being

challenged. HMRC will not, in the new system, be able to list cases at all. The appellant will, in the new system, have relatively unfettered access to the Tribunal and to take their dispute to the Tribunal when they wish to do so.

A consequence of this is in that the Tribunal user will now be responsible for making their appeal direct to the new Tax Chamber. This means completing a Notice of Appeal, including grounds of appeal and transmitting this to the Tribunal. There is a potential slight increase in administrative burdens arising from this for current users of the GCITs, who tend to be small businesses and individuals.

However this potential increased burden is offset by a number of benefits. For ex-GCIT cases the "appeal" will, initially, be to HMRC. However, the taxpayer may appeal to the Tribunal at any time and virtually simultaneously if they wish. The system is familiar to most users and ensures the settlement process is activated for the bulk of cases where settlement is desired without recourse to the Tribunal. At the same time, those who wish to have quick recourse to the Tribunal are able to.

In indirect tax (i.e. Vat and Duties) users are already familiar with reviews and reconsiderations but there will be a statutory option of an internal review before any appeal is lodged. The one exception is in relation to appeals against decisions about the restoration of seized goods where, as now, reviews will be mandatory.

The Tribunals Service is working closely with HMRC to ensure that guidance is clear, and taxpayers understand where they are in each stage of the system. HMRC and Tribunals Service guidance will be aligned, to ensure filling out the Notice of Appeal is least burdensome as possible. It will, in the new system, be possible to appeal on-line, and there will be a choice of mechanisms for how the taxpayer transmits their appeal.

Another important mitigation in the new system is that there will be a Default Paper Track for a defined category of appeals. The Paper Track provides for matters concerning relatively small amounts and where there is straightforward test of reasonable excuse to be settled on the papers. This will provide savings in time and money for taxpayers in travelling to a hearing, and many cases are expected to be heard in this manner in the new jurisdiction.

Consistent procedures across direct and indirect taxation

Implementation also supports the goal of aligning the direct and indirect tax systems, as reflected by the merger of Inland Revenue and HM Customs and Excise into HMRC. Currently, different procedures apply depending on whether General or Special Commissioners are hearing a direct tax matter, or the VAT & Duties Tribunal is considering an indirect tax matter.

A key benefit of the change is that procedures can be refined around the needs of the particular case, rather than the nature of the tax in dispute. To this end a common set of rules of procedure across direct and indirect taxation are being developed, based around a categorisation of cases as Paper, Basic, Standard or Complex. Rules for the new Tax Appeals system are being considered by the Tribunal Procedures Committee.

The draft Rules provide for matters to be resolved in a proportionate way, and demonstrate a unified and coherent system. There is the Paper Track discussed above. The Basic Track mirrors the current practice in the GCITs, where an appeal is made and parties turn up with additional papers on the day. The Standard and Complex Tracks involve the issuing of directions and potential special case management hearings, as is appropriate to the nature of the matters in dispute.

The relative informality of the GCITs would be retained for those matters for which this is appropriate, whilst there are benefits in terms of straightforward VAT surcharges and mitigation penalties being managed in a quicker and more informal manner than now. There will be the flexibility for like matters that may be joined in an inquiry to be heard together, regardless of whether they relate to direct or indirect taxation. Overall, there should be a more proportionate, consistent and coherent approach to appeals, reflecting the complexity of matters considered by the Tribunal.

This would also be reflected in the judicial panels convened. Non-Legal Members would be expected to play a prominent role in hearing and chairing Paper and Basic Tracks, which would be the majority of

ones formally considered by GCITs. A key role for Non-legal Members in the new tax appeals system was supported in the recent consultation, and Tribunal users should benefit from panels being constituted that are appropriate to the needs of the case.

More coherent and consistent Tribunals administration

The fragmented administration of the GCITs has also been a fundamental criticism of the current system. Clerks, who are often local solicitors, provide administrative services, and cases can only be listed in local geographic divisions which sometimes do not have the workload to arrange regular meetings. The Tribunals Service provides some administrative services around processing of expenses and providing guidance, and such monitoring as the current system allows.

There will, for the first time, be one coherent administrative body receiving, listing and managing all direct and indirect tax appeals against the decisions of HMRC. This should provide a number of benefits to tribunal users. There will be one single Tribunals Service point for parties to contact, as well as consistent procedures for handling cases across the country according to how they are categorised.

For the more straightforward matters, the new system will have the flexibility to list cases locally, where local access is an important issue. However, if speed of listing is more important, then a case can be listed to more central locations, with a shorter waiting period. There will also, for the first time, be a default Paper Track, where cases can be heard quickly and on the Papers. Standard and Complex cases will be able to identified relatively quickly, and case management processes instigated.

The Tribunals Service will be receiving, tracking and listing all cases, and this means it will be possible for the first time to track individual cases through the system. This means the tribunal will be able to exert more control over individual cases and ensure they are dealt with in a timely and effective manner, with clear benefits to Tribunal users in terms of time and money.

Local access to hearings

Local access to hearings, a feature of the GCITs, is one many stakeholders wish to see retained. The GCITs are appointed to around 400 geographic divisions and hear cases very locally within these divisions. They hear cases in town halls, solicitor's offices and hotels, and the standard of accommodation is variable.

The Tribunals Service does not see it as cost effective to replicate a network of over 400 locations, and refit according to modern standards. The standard of Tribunals Service locations is relatively consistent UK-wide and guarantee, for example, access to people with disabilities. Nevertheless, the end of such a localised network might be seen as a cost to small business and individuals used to the extreme localism of the GCITs.

The Tribunals Service will list cases to be heard within the Tribunals Service estate (and in courts locations in Northern Ireland). There are around 130 Tribunals Service locations in the estate, which provides relatively broad UK-wide geographical coverage. Private Hires and options such as video-conferencing are available in remote locations or where appellants are genuinely unable to travel, and there is also the innovation of the Paper Track for cases.

The Paper Track is a default track where certain defined categories of cases will be heard on the Papers unless either of the parties choose an oral hearing (they have a right to this). The proposal was developed with the Stakeholder Group, many of whom saw this as an option that would benefit small businesses and individuals in terms of saving time and travel to hearings. There are a large number of cases in the new system that are likely to be Paper Track, what are expected to be nearly a third of all appeals and around half of the ex-General Commissioner workload.

Those cases that are not Paper Track will be categorised as Basic, Standard or Complex. In the current system, complex direct tax cases and all indirect tax cases are listed to a network of hearing centres based around London, Manchester and Edinburgh. In the new system the more straightforward VAT cases (e.g. VAT surcharges) will be listed UK-wide, as will some of the standard direct tax cases that would previously have gone to Special Commissioners. This means that locality of hearings will be enhanced for these kinds of cases, whilst for the upper end of direct and indirect tax the hearing network will remain unchanged.

More representative and effective judiciary

Whilst the good service provided by the GCITs over many years is acknowledged, the system itself is now acknowledged to require modernisation. The existing Special Commissioners, VAT and Duties and Section 706/04 Tribunal judiciary will map into the generic offices in the new system. The independent Judicial Appointments Commission is already recruiting to replace the GCITs in the new system. They are running an open competition process, which aims to recruit a diverse judiciary based on merit. A more representative judiciary will enhance the reputation of the new Tax jurisdiction.

All judiciary will be appointed to the new generic offices in the new two-tier Tribunals structure. They will come under the new terms and conditions. There will be a President of the First-Tier Tax Chamber who will report to the a Senior President. This should ensure more effectuve judicial oversight and ensure all judiciary receive the training and support enabling them to fulfil their duties effectively and responsibly.

There are further benefits in terms of utilising the flexibilities of the new two-tier Tribunals structure. At implementation, Judiciary from within the new Tax Chamber and across the new system will be able to be flexibly deployed to hear direct and indirect tax cases. This will support the flexible constitution of panels, and is of benefit to both the Tribunals administration and the many and diverse users of the system.

The Cost of the New System

The new system is expected to be less expensive to run than the old. The Outline Business Case in February 2008 assessed the costs of replacing the GCIT system (including General Commissioners and fee-paid Clerks) with new professional judiciary and new administrative staff. This work is the basis for assessing the costs of the new system in comparison to the old.

The GCITs costs around £3M per annum, and the new system is estimated to cost around £2.75M. There are, however, one-off set-up costs of around £1250K

Table 2

Summary Appraisal of Costs and Benefits

Benefits	**Costs**
Manifest independence of Tribunal, taxpayer has unfettered access and can appeal to the Tribunal virtually "at any time".	Taxpayer will need to appeal directly to Tribunal, which potentially imposes a new administrative burden ▪ Mitigated by HMRC processes for settlement. ▪ Tribunal Service and HMRC co-ordinated guidance. ▪ New default Paper Hearing Track, saving time and money for many cases.
Aligning the direct and indirect tax systems, supporting the development of process and procedures appropriate to the nature of the case. Proportionate and consistent procedures for cases categorised to Paper, Basic, Standard and Complex procedural tracks.	The system will be less costly for the Tribunals Service to run in the long-term. There are initial set-up costs in terms of new forms, guidance etc.
Coherent and consistent Tribunals administration. Single point of contact. Tribunals Service receiving, tracking, monitoring and listing all cases. More flexibility to list according to parties' preferences and needs.	The system will be less costly for the Tribunals Service to run in the long-term. There are initial set-up costs in terms of establishing the contact centre, staff recruitment, case tracking systems etc.
More consistent standard of hearing locations UK-wide, including guaranteed access for people with disabilities. Little change for current users of Special Commissioners and VAT & Duties Tribunals via the London, Manchester and Edinburgh network.	There will be fewer, less local hearing centres for ex-GCIT work, who currently hear in over 400 locations. ▪ Mitigated by options such as video-conferencing and local hires where appropriate ▪ New default Paper Hearing Track, saving parties travel time and money
Judiciary more representative of the communities they serve, recruited through open selection process. Improved Judicial oversight, training and support More flexibility to constitute panels according to the needs of the case.	A professionally remunerated judiciary will be more expensive than the current GCITs who are lay volunteers. This is off-set, however, in that there will no-longer be Clerks that are paid fees. The system will be less expensive to run in the long-term.
The new system will be less expensive to run in the longer term, with savings on the current GCIT system of around £200K - £250K p.a.	There are initial one-off set-up costs, estimated at around £1250K

Specific Impact tests

This section considers the impact of changes introduced by the Tribunals Service. For information on HMRC changes to their handling of appeals prior to the Tribunal should consult their RIA.

Competition

No impact on competition is expected. The creation of a new Tax Chamber is not likely to stifle innovation or to contribute to the development of monopolies.

Small firms

There is a potential impact on small firms in that they will need to appeal directly to the Tribunal and the very localised network of General Commissioner hearing centres is being abolished, which means that small businesses may need to travel further to attend a hearing. However, video-conferencing and local hires of venues will be used where appropriate. Hearings will take place across around 130 Tribunal service locations, which provide reasonable geographic coverage. There are also reduced costs for appeal through the proposed Paper Track for straight-forward direct tax penalty appeals.

Justice and Legal Aid

There is no impact on legal aid. Legal aid is not usually available in Tax tribunals, and practice is not changing as a result of these changes. The creation of a unified Tribunal with a common set of procedures should improve access to justice for appellants. The new Tribunal makes provision for Costs only in quite limited circumstances, such as in relation to unreasonable behaviour and where a case is determined to be Complex. In the later case, an appellant may opt out of the costs regime, and costs should not therefore deter an appellant from taking a case to Tribunal. There should also be benefits from panels being constituted that are more appropriate to the needs of the case.

Sustainable Development, Carbon Assessment and other environmental impacts

There is no quantifiable impact on these issues, and none were raised during the consultation. Any detrimental environmental impacts of increased travel are likely to be mitigated by the Paper Track and use of local hires and video-conferencing as identified above.

Health

There is no quantifiable impact on health. Tribunal users should experience a more consistent Tribunals service administration, and dispute resolution and composition of panels more appropriate to their issue in dispute.

Race, Disability and Gender Equality

A key policy aim of the new Tax Chamber is a more open and representative system of appointments, which should be beneficial in terms of encouraging a diverse judiciary more representative of the populations it serves. The new Tribunal will also provide a better service (better hearing facilities, improved processing, independence from HMRC in the listing process, professional panels for case hearings etc) than that in place now.

Human Rights

No impacts on human rights are identified. The standard of hearing facilities will be more consistent and less variable, which should in particular benefit people with disabilities.

Rural Proofing

There may be some small impact on rural communities from less use of local venues for hearings. However, most hearings tend to be held in public buildings, such as town halls, which can be freed up for other uses. Any impact on local businesses is likely to be tiny.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

ANNEX: Appeals data for 2006/07

General Commissioners		Special Commissioners	VAT and Duties Tribunal		Section 706 tribunal
Received	Heard	Heard	Received	Heard	Heard
20,200	5,350	25			
	3,200				
	450				
23,000	23,000				
1,100	1,000	30			5
			2,650	750	
			275	100	
	2,100				
205	1000	70			
	150				
	150				
44,505	**36,400**	**125**	**2,925**	**850**	**5**

Summary: Intervention & Options

Department /Agency: HMRC	Title: Changes to handling of appeals in the context of tribunal reform	
Stage: Implementation	Version: 2	Date:

Related Publications: Draft Statutory Instrument and Technical Note "The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2008" 2 June 2008

Available to view or download at:
http://www.hmrc.gov.uk/better-regulation/ia.htm

Contact for enquiries: Andrew Jackson Telephone: 0207 147 0331

What is the problem under consideration? Why is government intervention necessary?

The Tribunals, Courts and Enforcement Act 2007 brings together most government tribunals within a common framework in a single Tribunal. This includes appeals relating to HMRC which are currently heard by the General and Special Commissioners and the VAT and Duties Tribunals.

Different appeal rules and procedures apply across different taxes administered by HMRC and change is necessary to bring these together, in particular to provide a common review process which meets customer needs by enabling disputes to be resolved without litigation. It is appropriate for this to coincide with the establishment of the new tribunal.

What are the policy objectives and the intended effects?

This assessment considers only the HMRC reforms. The aims are to:

- align as far as possible the rules governing the handling of appeals across the range of HMRC business to make the review and appeals process clear and accessible for all HMRC customers;
- introduce explicit pre-tribunal reviews of all HMRC appealable decisions, to give assurance to customers, improve HMRC consistency and limit unnecessary recourse to tribunals;
- ensure a smooth transition to minimise disruption.

What policy options have been considered? Please justify any preferred option.

Non-statutory, statutory mandatory, and statutory optional review processes were considered. The statutory optional review was the strong preference of respondents to consultation so this is the preferred option. The statutory basis provides assurance for customers that their rights are protected. The option gives a clear choice of review or direct access to tribunal if appropriate.

Alignment of other matters concerned with the administration of appeals, for example, late appeals, interest and enforcement of tribunal decisions, will bring greater consistency across HMRC business.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Implementation will be closely monitored and an initial assessment of data gathered will be carried out by the end of year two.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Stephen C. Timms ..... Date: 18 Nov 2008

Summary: Analysis & Evidence

Policy Option: 1	Description: **Introduction of statutory optional review and alignment of administration**

COSTS

ANNUAL COSTS	
One-off (Transition) Yrs	Description and scale of **key monetised costs** by 'main affected groups' Minimal for customers, as any action by them will be no more than that normally associated with dialogue with HMRC. Reviews will help ensure potential disputes are resolved without unnecessary recourse to tribunal. The option to go straight to tribunal means that the status quo is preserved, which caps the costs at unchanged. HMRC will see some transitional cost.
£ Not quantifiable	
Average Annual Cost (excluding one-off)	Total Cost (PV) £ Not quantifiable
£ Not quantifiable	

Other **key non-monetised costs** by 'main affected groups' There will be some training and familiarisation costs for businesses and agents dealing with appeals and these will overlap with costs associated with learning about the new tribunals introduced by the Ministry of Justice (MoJ).

BENEFITS

ANNUAL BENEFITS	
One-off Yrs	Description and scale of **key monetised benefits** by 'main affected groups' There should be some time and cost savings both for HMRC and its customers in cases where the enhanced review process resolves cases which would otherwise have progressed to a tribunal hearing. It is not possible to quantify these at this stage because we would have to second guess the outcome of reviews and subsequent decisions by customers.
£ Not quantifiable	
Average Annual Benefit (excluding one-off)	Total Benefit (PV) £ Not quantifiable
£ Not quantifiable	

Other **key non-monetised benefits** by 'main affected groups' Increased resolution of cases at a review stage rather than forcing involvement with the tribunal should help avoid stress for customers. Greater consistency of rules and procedures will make it easier for taxpayers to understand and deal with the tax appeal system.

Key Assumptions/Sensitivities/Risks No volume changes are assumed in the counter-factual: cases are simply moving to a different tribunal. Although not quantifiable, key assumptions concern the take up of review, the extent to which review enables cases to be resolved and the cost of the review stage. The effects of changes introduced by MoJ are not covered in this summary.

Price Base Year 2008	Time Period Years p.a	**Net Benefit Range** (NPV) £ Not quantifiable	**NET BENEFIT** (NPV Best estimate) £ Not quantifiable

What is the geographic coverage of the policy/option?				United Kingdom	
On what date will the policy be implemented?				01/04/2009	
Which organisation(s) will enforce the policy?				HMRC	
What is the total annual cost of enforcement for these organisations?				£ Not quantifiable	
Does enforcement comply with Hampton principles?				Yes/No	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ Not applicable	
What is the value of changes in greenhouse gas emissions?				£ Not applicable	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	No	No	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Nil Decrease of £ Nil **Net Impact** £ Nil

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Scope

This Impact Assessment (IA) considers only the impact of changes introduced by HM Revenue and Customs (HMRC). For information on the impact of tribunal reform generally see the IA published with the Tribunals Courts and Enforcement Bill at http://www.justice.gov.uk/docs/tce_bill.pdf

The evidence baseline is constructed on the conditions expected at 1 April 2009. All cases that would have been heard in 2009/10 before the Commissioners or the VAT and Duties Tribunal are costed and benefits calculated on the assumption that they will be heard in the new Tribunal. There are no volume effects in scope as this is one for one.

To assess the HMRC changes accurately, we have defined the status quo as including any effects arising from the wider MoJ reforms. This ensures that this IA is correctly focussed on measuring the difference between implementing the HMRC specific reforms and not doing so.

Background

This work on the way appeals are handled by HMRC arises in the context of the reform of the tribunal system which is being taken forward by the MoJ.

The tribunal reforms embodied in the Tribunals, Courts and Enforcement Act 2007 envisage that the administration of tax appeals which are to be heard by a tribunal should be wholly in the hands of the Tribunals Service, rather than HMRC, who will be a party in the proceedings. In addition, appeals presently heard by a number of different tribunals will all come within the jurisdiction of the new unified tribunal structure set up under that Act.

The current administration of appeals against 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.

In indirect tax cases, decisions can be challenged without the need for a formal appeal. Following reconsideration, or on receipt of new information, the original decision can be varied, for example, an assessment may be reduced or withdrawn, thus bringing the matter to a conclusion.

The situation with direct tax is different as, in most cases, a decision cannot be challenged or varied unless an appeal has been made. Although, technically, the appeal is made to the General or Special Commissioners, it is sent to HMRC rather than to the Tribunals Service. HMRC then has a key role in arranging appeal hearings before the General Commissioners when these are needed. The differences between taxes are:

- VAT – A reconsideration by someone not involved in the original decision is offered. The taxpayer can appeal immediately whether or not the offer is taken up or can wait for the outcome of the reconsideration.
- Excise and customs duties and other indirect taxes – A taxpayer cannot appeal to tribunal without having first gone through a review process.
- Direct taxes – An appeal will have been lodged at a relatively early stage in the dispute.

There are no formal arrangements for offering a review or reconsideration but it is most unlikely that any case would get as far as a Commissioners' hearing without it having been subject to some kind of review.

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.

Policy objectives and intended effects

To bring consistency across the range of HMRC responsibilities, and to reflect the wider tribunal reforms, the present disparity of approach to appeals processes (in particular in relation to review) needs to change.

The introduction of a new tax tribunal in April 2009 provides a natural opportunity to introduce formal review procedures across all taxes and, where possible, to align appeals handling arrangements to make the processes clear and accessible for all customers.

In doing this, it is important to ensure that the new tribunal is not overwhelmed by large numbers of cases which could quite easily settled by dialogue between the parties, saving time, money and long periods of uncertainty. Currently the vast majority of disputes between taxpayers and HMRC are resolved between the parties without the need for a tribunal hearing.

Equally, it is important to ensure that systems are in place to ensure a smooth transition.

Consultation and options

Doing nothing is not a viable option as the existing tax tribunals are to be abolished under the Tribunals Courts and Enforcement Act.

Minimal change would leave very different appeal arrangements depending on the tax involved and this would conflict with the aims of tribunal reform and hinder progress towards increased consistency following the merger of the two former tax departments. Customers are entitled to expect that, if they are in dispute with HMRC, the procedures involved will, so far as possible, be the same whatever the subject matter, and able to cope with any necessary variations.

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 followed up by a response document "Summary of Responses and Future Direction" on 12 March 2008.

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 document suggested it might be desirable to have a more consistent review procedure introduced across all regimes administered by HMRC and respondents generally accepted this, provided the review process was optional and that disputes could be brought within the jurisdiction of the Tribunals Service at an early stage.

The document asked whether consultees favoured a non-statutory review governed by a Code of Practice or a mandatory or optional statutory review. Most respondents preferred a statutory review which was optional and this is what is to be adopted. Many agents, particularly those representing the smaller taxpayers, said they would advise their clients to go through the review process and we believe that encouraging use of a widely available, consistent review procedure will reduce the need for formal tribunal appeals, thereby saving money for customers. However, some larger businesses and agents wanted the right to proceed to tribunal without review and provision is made for this.

No changes are planned in one area where review is presently mandatory, concerning the restoration of seized goods, where the risks and issues involved are different from those relating to payment of tax.

We are suggesting that the introduction of an entitlement to an optional review will be close to cost neutral for customers as it should not require appellants or their representatives to argue their case to any greater extent than they do now. Nothing in our consultation process has suggested that this assumption is wrong. However, there are transitional costs in HMRC in the change to reviews.

Respondents were generally content with appeal time limits but considered that a time limit for HMRC to complete reviews should be set out in the law. This has been included along with

provision for the time limit to be varied by agreement. The law also makes provision for dealing with late appeals and late requests for review all of which gives the customer more certainty and c e of access to justice.

In some circumstances the VAT and Duties Tribunal is presently empowered to award interest, either to the taxpayer or to HMRC, at rates which lie within its own discretion. This creates unfairness between different taxpayers in comparable situations and it is unnecessary as interest at statutory rates is already provided for. The ability of the tribunal to set discretionary interest rates will be removed.

To date, few appellants have benefited from this discretionary power so this proposal will have little financial effect against a baseline of current practice. However, it does remove the potential for future awards of interest above statutory rates. This means there is a protective effect on future Exchequer revenues and a negative impact on potential awards of interest to appellants

HMRC is working closely with the MoJ to ensure that 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. Respondents' views have been taken in to account by HMRC and MoJ when devising arrangements for handling cases already "in the system".

Section 124 of Finance Act 2008 enables the implementation of these changes by Statutory Instrument which will also contain changes made under powers in the TCEA and a further opportunity for stakeholders to comments was provided when a draft order "The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2008" accompanied by a Technical Note were published on 2 June. HMRC's response to their comments will be published in a "Summary of Technical Responses" when the draft Order is laid before Parliament.

Costs and Benefits

The costs and benefits will depend on a large number of variable factors many of which are difficult to quantify. These include the number of appeals going to review or to tribunal, the time and costs associated with the review process, and the impact on customer behaviour. Overall it is stressed that the volume effect is predicated on there being no change in the number of appeals flowing through the new system.

The table at Annex A sets out some indicative data about the annual number of appeals in different HMRC business areas, and the ways in which these feed through to tribunal hearings. In particular it shows that only a small proportion of appeals ever reach a hearing. The table provides the key statistics on the volumes of cases in the baseline for the latest period which is 2006/7. Detailed figures of direct tax appeals received and cases heard by General Commissioners are not available so this is the best estimate available from several sources of incomplete or poor data.

Outside the scope of this project, changes in the Construction Industry Scheme and work resulting from the Review of Powers (which has its own IA) have created new appeal rights. Where there are no known specific changes a uniform growth rate of 1% per year was assumed to take account of factors such as population change of customers expected to be making appeals. This produces the counter-factual baseline in 09/10 to which the Tribunal Reform subsequently applies.

Another variable is customer behaviour particularly in the area of direct tax where the concept of formal review is new. The review will be optional and therefore customers will use it where they feel it will add value in excess of any additional cost. If they do not feel it is of significant additional value they can appeal directly to the tribunal.

As an illustration of the results of this work, the total number of appeals forecast for 2009/10 is around 400,000. However we expect, as now the vast majority of these (of the order of 85% to

90%) to be resolved with the person issuing the decision with the balance entering the review stage or reaching a tribunal.

Costs and benefits to customers

The changes in legislation provide a number of costs and benefits to customers and the department. They are discussed below.

Any change in legislation brings with it a one-off cost to customers and agents of becoming familiar with the new system. However, as many of the changes are designed to create a more uniform approach across the department, learning costs should be minimised. Detailed guidance is also being produced to help explain the new processes and the options available to customers.

Customers will experience a more uniform approach to tax appeals across the department which should reduce the burden of having to be knowledgeable about a number of different regimes. During consultation, respondents suggested that they considered there would be a reduction in the burden of appealing under the new system.

The introduction of a review process that is common across all regimes not only has the advantage of a unified approach but also allows customers who didn't previously have the opportunity to seek a formal review of decisions to do so (mainly in direct taxes). This enables customers to get a fresh pair of eyes to look into their case without the cost and potential delay of appealing to the tribunal. Direct tax cases resolved at the review stage that might previously have gone to the Commissioners represent benefits for both HMRC and the customer in terms of greater certainty and reduced legal and administration costs.

VAT customers already have the option of a reconsideration and could appeal to tribunal at the same time or could wait until the reconsideration was complete. In respect of review, these customers will notice the least change but they will benefit from the review becoming a statutory right and it being time limited.

Customers with a dispute about customs, excise, insurance premium tax and/or environmental tax matters must currently have a statutory review before they are able to appeal. Here there is a benefit in that where customers feel there is advantage in doing so, (usually in very large cases) they can now appeal directly to the tribunal. By removing a step in the process this may reduce the time that resolution of the case will take. These customers will also be able to go to tribunal if HMRC refuse to carry out a review because the request was submitted out of time.

We expect a large number of potential appellants will request a review and hence we expect that the balance of costs and benefits of the policy will be largely driven by this option as against the right to go straight to the tribunal. Consistent with this option, burdens faced by customers who resolve their affairs by way of a review will be less than those who are unable to do so under the present rules. Some customers may experience more time costs in waiting for a review decision, but with the benefit of a reduction in burden if the new review process is able to successfully resolve their appeal by removing the need to go to the tribunal.

Those customers who do not want to wait will have the option of declining the review and proceeding to tribunal. In some large or complex cases, perhaps where legal advice has already been sought, a fast access to the Tribunal may bring them some time benefits; and may be the most practical approach to allow for the resolution of the appeal. So a net benefit would be scored here.

When a case involves the payment or repayment of tax, the VAT and Duties Tribunal has the power to award interest at such rate it thinks fit. In future, interest will only be payable at the statutory rate. This may result in a small cost to those winning an indirect tax appeal.

A number of improvements in customer service should result from things such as improved management information from the new IT system and a closer working relationship between HMRC and the MoJ.

Overall, our view is that the benefit of review will be attractive to small businesses and individua unrepresented taxpayers but we cannot quantify the absolute size. We expect that the c tributions of net benefits definitely favour the smaller businesses and individuals who can choose a review instead of the more costly (and possibly more stressful) litigation. During consultation this benefit to small business and individuals was particularly stated.

Costs and benefits to HMRC

HMRC will face one-off costs for changes to IT systems (though not at case management level in the short term) including changes to existing systems as well as new system requirements to manage the review process and provide management information. Other costs to the department include learning for staff to ensure they are aware of the new procedures, rewriting and publishing forms, guidance and leaflets.

There will be an annual increase in staff costs, as staff are required in some business areas to undertake reviews that previously did not occur.

Due to the changes in the IT systems HMRC will be able to gain better management informatior this will allow for improved planning within the department. It will also allow feedback from the review process to initial decisions makers, this feedback loop will enable greater learning which should in the long run improve the quality of decisions being made and have a positive impact on customer service.

A trial of the review process for direct tax cases has been underway in the Manchester area. This has provided a valuable learning experience for the department in terms of resourcing and management issues. It does not permit grossing up to UK level.

Closer working relationships have been developed between HMRC and the MoJ which will allow for better administrative processes including the notification of appeals by MoJ to HMRC resulting in more efficient internal processes and improved customer service. There will be transitional issues and it may take some time for the full efficiency benefits to be realised.

Specific Impact tests

This IA considers only the impact of changes introduced by HMRC. For information on the impact of tribunal reform generally see the IA published with the Tribunals Courts and Enforcement Bill at http://www.justice.gov.uk/docs/tce_bill.pdf

Competition

No impact on competition is expected and none was raised in the consultation.

Small Firms

The changes apply equally to small firms and an increased benefit is expected for this sector where review avoids the need for litigation. As the review and appeals processes provide safeguards for customers, it would be wrong to exclude small firms. Representative bodies and agents of small firms were invited to take part in the consultation. As noted above, agents said they would recommend use of the review process to small firms and expected them to benefit.

Legal Aid

There is no impact as legal aid is not, and will not be, available in the tax tribunals. Any impact on the Courts, or in relation to the award of costs by tribunals, will largely result from the MoJ reform of tribunals and not specifically from HMRC changes.

Sustainable Development, Carbon Assessment, and other environmental impact

No impact on environmental issues has been identified and none was raised in the consultation.

Health

There is no significant impact on health. However, the aim of the policy is to aid the resolution of disputes without unnecessary recourse to tribunal. This may result in a small impact in terms of reduced stress for some customers.

Race, Disability and Gender Equality

No impacts in relation to race, disability or gender have been identified and none was raised in the consultation.

Human Rights

No implications for human rights have been identified and none was raised in the consultation.

Rural Proofing

No different impact in rural areas has been identified and none was raised in the consultation.

Specific Impact Tests: Checklist

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Annex A Appeals data for 2006-07

Business Area	Number of Appeals	General Commissioners		Special Commissioners	VAT and Duties Tribunal		Section 706 tribunal
		Received	Heard	Heard	Received	Heard	Heard
Income tax (late filling penalties)	141,400	20,200	5,350				
Income tax other	43,300		3,200	25			
Employer tax	2,000		450				
Section 93		23,000	23,000				
Corporation tax	29,000	1,100	1,000	30			5
VAT	7,375				2,650	750	
customs and excise duties	3,800				275	100	
ex-parte			2,100				
other	455	205	100	70			
capital gains tax			150				
national insurance			150				
Total	227,330	44,505	36,400[1]	125	2,925	850	5

[1] Includes 900 hearings the subject matter of which it has not been possible to identify.