

These notes refer to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) which received Royal Assent on 25 February 1999

SOCIAL SECURITY CONTRIBUTIONS (TRANSFER OF FUNCTIONS, ETC.) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Decisions and Appeals

General

168. Part II of the Act (sections 8 to 19 and Schedule 7) provides for Inland Revenue staff to take decisions on matters currently administered by the CA. It also provides that appeals against those decisions should, in the main, go to the tribunals that hear tax appeals. Often similar or identical issues will arise for both tax and contributions. An example would be whether a person is employed or self-employed.
169. Currently, there is no right of appeal on a point of fact to an independent tribunal on contributions issues. Instead, there is a procedure for the Secretary of State to be asked formally to determine one of a range of "questions". That determination is made by DSS civil servants, sometimes following an inquiry assisted by Counsel or by other expert advice. There is a right of appeal, but only to the High Court (in Scotland, the Court of Session) and then only on a point of law.
170. The SSA provides that a range of decisions by the Secretary of State should be subject to appeal, on both points of fact and law, to a new unified appeals tribunal. That tribunal will subsume the existing benefit appeals tribunal. These provisions will be brought into effect in the course of 1999/2000.
171. A number of representative bodies, and other interested parties (for example, the Tax Law Review Committee) have suggested that, once the Inland Revenue is responsible for contributions matters, appeals should be heard by the same tribunals as for tax appeals. This would reduce the chances of inconsistent tribunal decisions on the same or similar law, and could provide appellants with better service than having to take much the same issue to two different appeal bodies. During the passage of the SSA, the Government undertook to reconsider use of the unified appeals tribunal for contributions issues.
172. The broad aim of Part II is to merge aspects of the SSA decision-making process with the TMA appeals procedures. Historically, the appealable decision for tax has been the issue of an assessment or the determination of a claim for relief. Since the introduction of self-assessment, tax appeals will increasingly be against an Inland Revenue amendment to a self-assessment. In all cases, the tax decision against which an appeal is made will potentially cover a range of matters of fact and law, rather than the more specific decisions envisaged in Part II of Schedule 3 to the SSA.
173. This merger with existing tax rules is complicated by the expected staged entry into force of the Part I of the SSA. There are added complications in merging the two sets of procedures in that income tax is an annual tax. So decisions will normally relate to a whole tax year. By contrast, contributions operate on relatively short - even weekly

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- pay periods. But the consequences of implicit or explicit decisions on contributions liability, and hence someone's contributions record, may only come to light if benefit entitlement is queried, perhaps years later.

174. In addition, for contributions it is more likely that someone other than the Inland Revenue and the appellant may have an interest in the outcome of an appeal. An example would be an appeal about employment status, where an individual's employer or engager will face different contributions consequences according to whether the individual is found to be employed or self-employed.
175. For those reasons the processes for making decisions and handling appeals cannot be exactly the same for contributions as for tax. The provision for decision-making and appeal procedures in Part II needs to cover not just contributions but other operational areas transferring from DSS, that is SSP, SMP and pensions issues.
176. Taking all these factors together, there will be a wide range of permutations of decision-making and appeals issues. Hence Part II takes a number of regulation-making powers to address details, rather than attempting to specify them in primary legislation.

Section 8: decisions

177. **Section 8** provides for the Inland Revenue to take decisions on specified contributions, SSP and SMP matters. The list of decisions for the Inland Revenue set out in paragraphs (a) to (l) of subsection (1) comprises much of the Secretary of State's existing jurisdiction under section 17(1) of SSAA 1992 together with some further matters. The terminology is taken from that section and from the SSA.
178. **Section 8(1)(m)** is a general provision along the lines of paragraph 29 Schedule 3 Part II SSA ("power to prescribe other decisions"). It allows the Inland Revenue to set out in regulations other contributions decisions. For example, this will allow the Inland Revenue officers to take responsibility for decisions that might follow from future changes to the legislation on contributions.

Section 9: regulations

179. **Section 9** is modelled on section 11 SSA. It provides for regulations to be made about decisions, so that the permutations mentioned above may be taken into account. It is intended that these regulations will cover matters such as what constitutes a decision, how the decision is to be made and notified to those interested, the persons affected by a decision and the period covered by a decision. It confirms that Inland Revenue staff can seek specialist advice before making a decision. An example would be where medical evidence was relevant to a claim for SSP.

Section 10: variation of decisions

180. **Section 10** gives a regulation-making power for Inland Revenue decisions made under this Act to be subsequently varied or, (where, for instance, circumstances change), enabling a new decision to be made on the same question. It reflects the powers in section 9 SSA on revision of DSS decisions in prescribed circumstances, and the powers in section 10 of that Act to supersede earlier DSS decisions. It is expected that the regulations will address a range of circumstances, including those where the initial decision was:
 - based on incomplete or incorrect facts
 - wrong in law
 - correct, but circumstances of fact or law have changed.

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181. The power to define when the variation or replacement decision takes effect is needed because decisions may be in respect of a past occasion or period; or may affect the future.
182. Powers conferred in subsection (1)(a) and (b) provide for the Inland Revenue to vary or supersede their own decisions. Where the tax appeal Commissioners have determined an appeal against a decision then subsection (1)(c) provides for an Inland Revenue officer to make a superseding decision to replace it only if there has been a material change of circumstances.

Section 11: appeals

183. **Section 11** provides for a right of appeal to an independent tribunal, the tax appeal Commissioners, against any decision taken under section 8, or a decision superseding an earlier decision. (Section 19 defines "tax appeal Commissioners" as the General and Special Commissioners for income tax.) The section recognises that for contributions, SSP or SMP issues, unlike (in most cases) for tax, more than one party may have an interest in the outcome of an appeal. For example, both the employer and employee may have an interest in the outcome of an appeal on SSP and SMP. So section 11(2)(a) gives appeal rights to both about a person's entitlement to benefit. For other issues, because the permutations of circumstances will be wide, section 11(2)(b) provides a regulation-making power for the Inland Revenue to give interested persons a right to appeal.

Section 12: exercise of appeal right

184. **Section 12** adapts material in section 31 TMA on appeals. The intention is to align the procedures as far as practicable with those for tax appeals. So tax practitioners, and the tax appeal Commissioners themselves, should be able to follow familiar processes in handling these new areas of work. Parties to appeals against Inland Revenue decisions - whether on tax, contributions, SSP or SMP - also would face only a single set of tribunal deadlines and procedures.
185. **Section 12(1)** adopts the 30 day appeal deadline in section 31(1) TMA. Section 12(2) mirrors section 31(2)'s requirement that the appeal is to be made to the officer who made the decision. Section 12(3) follows section 31(5) in giving the appellant the opportunity to raise additional grounds before the tribunal to those specified in his appeal. Section 12(4) follows section 31(4) TMA in putting appeals to the General Commissioners (a local lay tribunal) unless the appellant elects to go the Special Commissioners (a national tribunal whose members are legally qualified). Section 12(5) brings in provisions in the TMA governing the circumstances in which an appellant's election to go to the Special Commissioners may be withdrawn by agreement with the Inland Revenue, or set aside by the General Commissioners.

Section 13: regulations with respect to appeals

186. **Section 13** allows the adoption for contributions of most of the material about appeals in Part V TMA which covers appeals procedures, settling appeals by agreement and taking appeals beyond the initial tribunal. Because there are material differences between tax and contributions, SSP or SMP, the regulation-making power allows for appropriate modification of the rules for appeals on tax matters. In that respect, it reflects the existing arrangements for appeals to the tax appeal Commissioners for Class 4 contributions, under paragraph 8 Schedule 2 CBA.
187. The tax appeal Commissioners are funded by the Lord Chancellor's Department in England and Wales, and the Lord Advocate's Department in Scotland. Hence regulations under section 13 are to be made with the concurrence of those Ministers. Detailed regulations on the procedures to be adopted by the General and Special Commissioners are made by the Lord Chancellor (with the Lord Advocate's consent.) Section 13 provides that current procedural regulations shall be treated as including

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procedures for appeals to the Commissioners against decisions transferred by this Act, and that future regulations also should cover appeals against transferred decisions.

Section 14: matters arising as respects decisions

188. **Section 14** is derived from section 18 SSA. Subsection (1) confers equivalent regulation-making powers to cover matters arising before a decision is made, or an appeal is determined, or about the consequences of varying or superseding a previous decision, including a variation on appeal. Subsection (2) enables regulations to provide for the payment of contributions pending the determination of an appeal. Since this power could affect benefit rights, it is to be exercised by the Inland Revenue with the concurrence of the Secretary of State in relation to SSP and SMP matters (subsection (3)).

Section 15: transitional provisions

189. The SSA, which includes the new material on social security decision-making and appeals to the new unified appeals tribunal, is not yet in force. It will not come fully into force until after the day appointed for the operational transfer. A succession of appointed days in respect of different matters is expected during the course of 1999/2000. The main provisions of this Act are drafted on the basis that the changes made by the SSA are in place, but for a transitional period that is unlikely to be the case. Section 15 enables regulations to be made modifying existing adjudication provisions in the SSAA 1992 and the pension schemes legislation so as to enable the decision-making regime introduced by this Act to operate alongside the present arrangements for social security adjudication relating to contributions, SSP, SMP and pensions schemes during that transitional period.

Section 16: decisions under the Pension Schemes Act 1993

190. **Section 16(1)** transfers to the Inland Revenue the function of making decisions on contracting-out matters, which arise mainly under Part III of PSA. The amendments to the PSA made under subsection (2) retain the decision-making and appeal procedures to be introduced by the SSA, including an appeal route on pensions issues to the unified appeals tribunal. This is because the work on contracted-out pensions is separate from other current CA work, and is specialised and often highly technical and quite distinct from tax and contributions work. The Act provides that the few formal appeals expected should stay with the unified appeal tribunal, with its scope to include pensions experts as tribunal members, rather than transfer to the tax appeal Commissioners.

Section 17: responsibilities at home and credits

191. Social security legislation provides for people to enhance their contribution records without paying contributions. Examples are credits when someone is undergoing training or on jury service rather than working. Home responsibilities protection is given where someone is a carer at home. Although these provisions are primarily about benefit entitlement, many of the operational tasks are currently undertaken by the CA. Rather than relocate the work, section 17 provides for it to be done by the same people, under Inland Revenue management but acting as agents for the Secretary of State.

Section 18: amendments relating to decisions and appeals

192. **Section 18** introduces Schedule 7. This provides for the detailed amendment of existing legislation relating to decision-making and appeals (the TMA, CBA, SSAA 1992, PSA, the Employment Rights Act 1996 and the SSA). In particular, it provides for requests for Inland Revenue decisions on contributions which are necessary to make benefit decisions or determining benefit appeals.

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Schedule 7: Decision making and appeals

Taxes Management Act 1970 (TMA)

193. *Paragraphs 1 to 3* amend the TMA to give the tax appeal Commissioners jurisdiction over appeals against decisions under Part II of this Act.

Social Security Contributions and Benefits Act 1992 (CBA)

194. *Paragraphs 4 to 8* amend CBA to include this Act's appeal procedures in the legislation which may be modified for special cases - for example, the contributions treatment of servicemen, mariners and those living abroad.
195. *Paragraphs 9 and 10* amend CBA to provide that interest and penalties shall not run where a decision affecting the interest or penalty liability has yet to be made.
196. *Paragraph 11* amends paragraph 8 of Schedule 2 so that Part V TMA can apply in relation to decisions about certain categories of Class 4 contributions.

Social Security Administration Act 1992 (SSAA 1992)

197. *Paragraphs 12 and 14* make consequential amendments to sections 117 and 166 SSAA 1992 to reflect the new arrangements for appeals.
198. *Paragraphs 13, 15 and 16* amend the SSAA 1992 to do three things. First, paragraph 13 introduces a new section 117A. This parallels the present section 117. Section 117 provides that decisions by DSS shall be treated as final for court proceedings, for example for enforcement of contributions debts. The new section 117A similarly provides for finality in such court proceedings of decisions taken by the Inland Revenue on transferred matters. Where a decision relevant to those proceedings has yet to be taken, the matter will be referred to an officer of the Inland Revenue for a decision. Where an appeal is outstanding against a decision, the court proceedings will be stayed until the appeal has been resolved. Second, paragraph 15 provides that this Act's appeals legislation may be modified by bilateral contributions and benefits treaties with other countries. Third, paragraph 16 provides for payment of travelling expenses to people required to attend an interview, including one in connection with an appeal. This provision parallels DSS's ability to pay expenses under section 180 SSAA 1992.

Pensions Schemes Act 1993 (PSA)

199. *Paragraphs 18 and 19* amend the PSA to provide for decisions to be made by the Inland Revenue rather than by DSS; and provide for a pensions equivalent to the new section 117A SSAA 1992 material on court proceedings.
200. Specifically, paragraph 18(2) removes section 167(3) of the PSA which confers powers to make regulations in connection with the decision making process. This will be unnecessary once Section 170 of the PSA as amended by section 16(2) of the Act is in force.
201. *Paragraph 20* inserts new section 171A into the Pension Schemes Act to require the Inland Revenue to produce a report setting out the standards achieved by their officers in the making of decisions on contracted-out matters against which a right of appeal lies to a DSS unified appeal tribunal. Subsection (2) allows the report to be included in an annual report prepared by the Inland Revenue or annexed to the equivalent report produced by the Secretary of State under section 81 PSA. Subsection (3) requires that the report is laid before Parliament.

Employment Rights Act 1996

202. *Paragraph 21* amends section 215 of the Employment Rights Act 1996 to provide for appeals about overseas employment issues to go down the tax appeal route.

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Social Security Act 1998

203. *Paragraph 22* makes it clear that decisions on transferred matters can only go down the tax appeal route (apart from pensions matters).
204. *Paragraph 23* repeals a reference to DSS variations of decisions on directors' liability, since those decisions pass to the Inland Revenue.
205. *Paragraph 24* provides a power for DSS to refer contributions issues to the Inland Revenue for resolution. This may involve an initial opinion or a formal appealable decision. And DSS may continue to process other issues while the contributions issue is being resolved.
206. *Paragraph 25* revises section 12(2) SSA to reflect the transfer of SSP and SMP appeals to the tax appeal Commissioners.
207. *Paragraph 28* repeals references to procedural issues connected to matters transferred to the tax appeal Commissioners by this Act.
208. *Paragraphs 30 and 31* remove the current ability of DSS or an appeal tribunal to require SSP or SMP claimants to undergo a medical examination.
209. *Paragraph 33* provides powers for benefit appeal tribunals to refer to the Inland Revenue contributions issues relevant to determining a benefit appeal. Where this happens, DSS may be required to revise their earlier decision.
210. *Paragraph 34* makes clear that the rules governing the correction of benefit decisions made in error do not include decisions in respect of transferred functions.
211. *Paragraph 35* clarifies the references to "Commissioners", drawing a distinction between the tax appeal Commissioners and Social Security Commissioners.

Section 19: interpretation in Part II

212. This defines who are the "tax appeal Commissioners".