

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 III: Miscellaneous and Supplemental

Section 20: payments under section 42A(3) Pension Schemes Act 1993

213. The policy intention is that National Insurance rebates should be funded from the NIF. However the legislation currently provides for age-related rebates to contracted-out money purchase schemes to be paid out of money provided by Parliament. This section corrects section 177 of the PSA and section 172 of the Pension Schemes (Northern Ireland) Act 1993 (the sections which cover the general financing arrangements for those Acts) to allow money purchase rebates to be funded from the NIF.
214. Subsection (1) provides for National Insurance rebates for contracted-out occupational money purchase pension schemes made by Inland Revenue to be funded from the NIF, and for any recoveries to be paid into that Fund.
215. Subsection (2) makes corresponding provision in the Northern Ireland legislation.
216. Subsection (3) provides for a payment to be made out of the NIF into the Consolidated Fund in respect of the sums that the Secretary of State estimates he has paid (out of the Consolidated Fund) in respect of such rebates in the current tax year.
217. Subsection (4) makes a corresponding provision in the Northern Ireland legislation.
218. Subsection (5) provides that until the date of operational transfer, any rebates made will be made by the Secretary of State; and up until that date the reference to the Inland Revenue in subsection (1) shall have effect as if it was a reference to Secretary of State.

Section 21: property, rights and liabilities

219. This section deals with the transfer of property, rights and liabilities of the Secretary of State for Social Security to the Inland Revenue and the Treasury under the provisions of this Act.
220. *Subsections (1) and (2)* deal with the transfer of property, rights and liabilities to the Inland Revenue or the Treasury when a transfer provision is commenced by Order.
221. *Subsection (3)* replicates a standard provision in Orders in Council under the MoCA. It clarifies property ownership following transfers of functions so that if the Inland Revenue or Treasury wish to dispose of property transferred to them under this Act, a certificate issued to say this shall be conclusive evidence that this property has been transferred. This provision is unlikely to be used since the vast majority of DSS property is now held under contract with private suppliers. However, these provisions provide a back-up in any case of disputed ownership.

Section 22: contracts

222. The CA currently receives goods and services under a wide range of contracts. Under section 21 contracts relating wholly to functions transferred become contracts with the Inland Revenue. However, the CA also receives goods and services under contracts which also provide for the supply of goods or services to other parts of the DSS, such as the BA. So in these cases the contract relates partly to functions transferred and partly to functions to remain in the DSS. Examples would be some of the contracts providing computer hardware and software (run by the Information Technology Services Agency on behalf of the DSS), office services to buildings where there is joint ownership by BA and CA staff, and so on. Section 22 provides for continuity in the supply of goods or services under these contracts.
223. Subsection (1) defines this group of contracts. Subsection (1)(a) makes it clear that section 22 applies to contracts relating partly to functions transferred under this Act and partly to functions retained with the DSS. Subsection (1)(b) adds to this contracts which may themselves relate solely to functions transferred to the Inland Revenue but which are ordered under a framework agreement to which subsection (1)(a) applies. So section 22 would apply to a framework agreement for the supply of desktop computers to the DSS generally, and in the same way to an individual order by the CA for a computer under that framework. Subsection (2) then disapplies, for contracts falling within section 22, the general provisions for the transfer of property, rights and liabilities in section 21.
224. Subsections (3) to (5) then provide two patterns for treatment of these contracts. The first, in subsection (3), provides that the contract, in so far as it relates to transferred functions, should be treated as providing goods and services also to the Inland Revenue. This means that the CA, as part of the Inland Revenue, will continue to be able to receive goods and services under current contracts, although the contract will continue to be with and managed by the DSS. The Inland Revenue will not be able to use this provision to receive any goods and services under the contract for purposes other than functions transferred to it by this Act.
225. Subsections (4) and (5) then provide for an alternative option. In some cases of contracts within this group it may be more appropriate for the contract to be transferred to the Inland Revenue, in particular where the CA receives the majority of the benefits under the contract. Subsection (4) provides an order-making power by which specific contracts, or groups of contracts, can be treated as exceptions to the rule in subsection (3). The exception, set out in subsection (5) is that the contract is transferred to the Inland Revenue but that DSS can continue to receive goods and services under the contract.

Section 23: further transfers

226. Normally transfers of functions between Government Departments are effected by an Order in Council made under powers in the MoCA, rather than by primary legislation. Experience of these operational and policy transfers may suggest that further adjustments of the DSS/ Inland Revenue boundary are sensible. Section 23 provides a mechanism for making these adjustments in a similar manner to Orders made under the MoCA, rather than by returning to Parliament with another Bill.
227. Subsection (1) creates the power to transfer functions by Order in Council. The transfer can be from the Secretary of State to the Inland Revenue or vice versa. No power is provided to transfer responsibilities between the Secretary of State and the Treasury since this can already be achieved by an Order under MoCA. Subsection (2) sets the limits on the scope of such Orders to ensure that section 23 does not provide a general power to transfer functions between the Inland Revenue, the Treasury and the DSS. These Orders can transfer functions which relate to contributions and the NIF (other than those relating to collection function under section 1(1) CBA, or control and management of the NIF as set out in section 161 SSAA 1992), SSP, SMP and

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contracting-out. Under subsection (1)(d)(i) these Orders can transfer decision-making responsibilities relating to the transferred functions. Under subsection (1)(d)(ii) these Orders can transfer the mechanism for deciding on these issues between the provisions of Part II of this Act - which allows for decisions to be made by the tax appeal Commissioners - and Chapter II of Part I of the SSA - which allows for decisions by the unified appeal tribunals.

- 228. Subsection (3) sets out which decisions may be affected by an Order.
- 229. Subsection (4) allows for consequential or transitional measures in an Order, including on contractual and other legal issues.
- 230. Subsection (5) provides for a “certificate of transferred property” procedure as in section 21(3).
- 231. Subsection (6) interprets how the power applies in respect of the equivalent Northern Ireland legislation.

Section 24: Northern Ireland

- 232. This section is concerned with provision for corresponding and related functions in Northern Ireland. Contributions in Northern Ireland are collected by the Contributions Unit of the Northern Ireland Social Security Agency of DHSS (NI), although in practice much of the work is done on behalf of the Unit by the CA in Great Britain. It is intended that the Contributions Unit should be transferred to the Inland Revenue at the same time as the CA is transferred. Similarly, it is intended that contributions policy in respect of Northern Ireland should transfer at the same time as the equivalent policy in respect of Great Britain.
- 233. Paragraph 10 of Schedule 2 to the Northern Ireland Act 1998 excepts contributions and related matters, such as National Insurance rebates to pension schemes, from the powers of the Northern Ireland Assembly. Section 24 allows for the direct transfer to the Inland Revenue or, as the case may be, the Treasury, of operational and policy responsibilities which correspond to those transferred by this Act (subsection (1)(a) and (c)). It also allows for the temporary transfer of contributions policy responsibilities in respect of Northern Ireland to the Secretary of State for Social Security (subsection (1)(b)).
- 234. The (one or more) Orders in Council are likely largely to replicate relevant provisions of this Act, but for Northern Ireland legislation. Section 24(4) allows an Order to contain consequential, transitional or other modifications of enactments. It also permits the transfer of civil servants from the Northern Ireland Civil Service to the Home Civil Service.
- 235. [Section 24 \(4\)](#) and [\(5\)](#) again provide for a certification procedure in relation to the transfer of property.
- 236. [Section 24 \(7\)](#) allows for any renaming and restructuring of the relevant Northern Ireland Departments that may occur, prior to the Northern Ireland Assembly starting work, between enactment of this Act and the making of the Order/s in Council under this section.

Section 25: orders and regulations

- 237. This section provides that orders and regulations are to be made by statutory instrument subject to the negative resolution procedure. Subsections (3) to (6) follow other social security legislation (e.g. section 189 (4) and (5) SSAA 1992; section 175 (3) and (4) CBA) in making clear that regulations may make different provision within the classes to which the specific regulation-making power relates, may make incidental or transitional provisions, and may allow for a person to exercise a discretion when dealing with any matter.

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Section 26: savings, transitional provisions, consequential amendments and repeals

238. The section introduces Schedules 8, 9 and 10.

Schedule 8: Savings and transitional provisions

239. *Paragraph 1* provides that

- any actions commenced by the CA on behalf of the Secretary of State prior to the day appointed for the operational transfer but still in train will remain valid after the transfers to the Inland Revenue and the Treasury.
- any appointment, authority, decision, approval or consent given in relation to any matter being transferred to the Inland Revenue or the Treasury prior to the day appointed for the operational transfer remains valid and is to be treated as if it had been made by the Inland Revenue or the Treasury.
- any secondary legislation or other document made before the transfer shall continue to have effect. References to the Secretary of State are to be treated as references to the Inland Revenue; and references to DSS or its officers as references to the Inland Revenue and its officers.

The drafting here follows precedents in Orders in Council made under the MoCA.

240. *Paragraph 2* relates to the various documents and forms which are in use by the CA which will have been printed and be ready for use as Inland Revenue forms from the day appointed for the operational transfer. Given the scale of the reprinting task, it ensures that if an old form has to be used any legal consequences of the form cannot be challenged purely on procedural grounds. To do so paragraph 2 allows any references to the Secretary of State or any officer of DSS to be construed as far as necessary as references to the Inland Revenue or as officers of the Inland Revenue.

241. *Paragraph 3* provides for the Inland Revenue to account for contributions to the DSS in any gap between the operational and policy transfer dates.

242. *Paragraph 4* provides that regulations made under section 9(2) of CBA must be made by the Treasury instead of the Secretary of State for Social Security if [paragraph 9 of Schedule 3](#) to this Act comes into force before section 51(4) of the SSA.

Schedule 9: further consequential amendments

243. This *Schedule* makes consequential amendments to the Debtors (Scotland) Act 1987 and the CBA.

Schedule 10: Repeals and revocations

244. This *Schedule* sets out the various provisions of legislation which are repealed or revoked as a result of the Act.

Part I lists the repeals in other Acts which take effect on such days as may be appointed.

Part II shows the regulations which are to be revoked on such days as may be appointed.

Section 27: Interpretation

245. [Section 27](#) sets out two basic definitions used throughout the Act.

Section 28: Short title, commencement and extent

246. This section sets out which provisions come into force on:

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- the passing of the Act, so that secondary legislation under powers conferred by the Act may be made before the day appointed for the operational transfer;
 - an appointed day.
247. The Act provides for multiple appointed days. The intention is that both the operational transfer and the policy transfer will occur on 1 April 1999.
248. The commencement order or orders may contain transitional provisions.
249. Since this Act principally amends legislation only extending to Great Britain, its territorial coverage is mostly limited to Great Britain. Exceptions primarily relate to amendments to United Kingdom-wide tax law.