
STATUTORY INSTRUMENTS

2002 No. 2976

**INCOME TAX
INHERITANCE TAX
TAXES
SOCIAL SECURITY**

**The General Commissioners and Special Commissioners
(Jurisdiction and Procedure) (Amendment) Regulations 2002**

Made - - - - *25th November 2002*
Laid before Parliament *3rd December 2002*
Coming into force - - *31st December 2002*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 46A(1)(a) and (1A) to (3) and 56B of the Taxes Management Act 1970⁽¹⁾ and section 13(3) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999⁽²⁾ and article 12(3) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999⁽³⁾, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽⁴⁾ and with the consent of the Scottish Ministers⁽⁵⁾, hereby makes the following Regulations:

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- (1) 1970 c. 9. Section 46A was inserted by paragraph 3, and sections 56B to 56D by paragraph 4, of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48). Section 46A(1A) is an interpretation provision and is cited because of the definition of Taxes Acts. It was inserted by paragraph 3 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”) and amended by paragraph 1 of Schedule 6 to the Social Security (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (“the Transfer Order”). Section 56B was amended by section 254 of the Finance Act 1994 (c. 9).
- (2) 1999 c. 2.
- (3) S.I. 1999/671.
- (4) 1992 c. 53.
- (5) The functions of the Lord Advocate under sections 46A and 56B of the Taxes Management Act 1970 were transferred to the Secretary of State by article 2(1) of, and the Schedule to, the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678). Those functions were then treated as being exercisable in or as regards Scotland, for the purposes of section 63 of the Scotland Act 1998 (c. 46), by article 3 of, and paragraph 4 of Schedule 1 to, the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), and were transferred to the Scottish Ministers by article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

Citation, commencement and application

1.—(1) These Regulations may be cited as the General Commissioners and Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2002 and shall come into force on 31st December 2002.

(2) The amendments made by these Regulations shall have effect only in relation to proceedings before the General Commissioners or the Special Commissioners on or after 31st December 2002 and in relation to proceedings commenced before that date the General Commissioners (Jurisdiction and Procedure) Regulations 1994⁽⁶⁾ or, as the case may be, the Special Commissioners (Jurisdiction and Procedure) Regulations 1994⁽⁷⁾ shall continue to have effect as if these Regulations had not been made.

(3) Any reference to a regulation by number alone means the regulation so numbered in the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 or the General Commissioners (Jurisdiction and Procedure) Regulations 1994 as the case may be.

Amendments to the Special Commissioners (Jurisdiction and Procedure) Regulations 1994

2. Amend the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 in accordance with the provisions of regulations 3 to 6 below.

3. In regulation 2—

(a) in the definition of “proceedings” after paragraph (i) add—

- “(j) any appeal to the Special Commissioners under Part II of the Transfer Act or Part III of the Transfer Order;
- (k) any appeal to the Special Commissioners under regulation 14(4) of the Working Tax Regulations;
- (l) any preliminary hearing held under the provisions of regulation 9;”.

(b) after the definition of “the Taxes Acts” insert—

- ““the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999;
- “the Transfer Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999;”.

(c) in the definition of “Tribunal” for “heard.” substitute “heard;”.

(d) after the definition of “Tribunal” insert—

- ““the Working Tax Regulations” means the Working Tax Credit (Payment by Employers) Regulations 2002⁽⁸⁾.”.

4. In regulation 7(1) for the words “the Presiding” where they appear substitute the word “a”.

5. After regulation 7 insert—

“Lead Cases

7A.—(1) Where—

- (a) one or more proceedings under Part II of the Transfer Act or Part III of the Transfer Order have been brought before, but have not yet been heard by, the Special Commissioners; or

⁽⁶⁾ S.I. 1994/1812, amended by S.I. 1999/3293.

⁽⁷⁾ S.I. 1994/1811, amended by S.I. 1999/3292 and S.I. 2000/288.

⁽⁸⁾ S.I. 2002/2172.

- (b) one or more proceedings under Part II of the Transfer Act or Part III of the Transfer Order have been brought before, but have not yet been heard by, any General Commissioners; and
- (c) it appears to the Presiding Special Commissioner that those proceedings give rise to common or related issues of fact or law (“same issues proceedings”),

the Presiding Special Commissioner may of his own motion or on application by a party to any of these proceedings direct that one of those proceedings be heard in the first instance as the lead case.

(2) The Presiding Special Commissioner may give such further directions as he also considers appropriate for determination of the lead case and without prejudice to the generality of the foregoing, such further directions may include in particular directions as to—

- (a) which common or related issues of fact or law (“same issues”) are to be determined in the lead case; or
- (b) which Tribunal is to hear the lead case.

(3) Subject to paragraph 14 the Presiding Special Commissioner may also direct that pending determination of the lead case all other same issues proceedings before the Special Commissioners, or that were pending before the General Commissioners, shall be stayed.

(4) Directions shall not be given under paragraphs (1) to (3) except on notice to all parties to the proceedings in question who shall be entitled to be heard before any directions are given.

(5) Without prejudice generally to the parties' rights of appeal and to paragraphs (8) and (9) as appropriate, the Tribunal's determination of the same issues in the lead case shall be binding on the parties to each of the same issues proceedings unless the Tribunal or the Presiding Special Commissioner directs otherwise.

(6) On the giving of directions under paragraphs (1) to (3) the Clerk shall send a copy of the directions to all the parties to the same issues proceedings.

(7) Upon determination of the same issues in the lead case the Clerk shall send a copy of that determination to all the parties to the same issues proceedings.

(8) Notwithstanding the provisions of paragraph (5) any party to any of the same issues proceedings may within 21 days beginning with the date on which that party receives notice of the determination of the same issues in the lead case apply to the Presiding Special Commissioner for a direction that the determination as to the same issues in the lead case shall not apply to those proceedings.

(9) Within 28 days beginning with the date of determination of the same issues in the lead case the Presiding Special Commissioner shall—

- (a) give such further directions as he considers appropriate in relation to the lead case and each of the same issues proceedings stayed pending the determination of the same issues in the lead case; and
- (b) such directions shall, without prejudice to the generality of the foregoing also include, as appropriate—
 - (i) directions as to the extent to which the determination of the same issues in the lead case is binding on any subsequent proceedings;
 - (ii) any further directions required as a result of an application under paragraph (8) which shall include, a direction as to any further hearing required in relation to those proceedings.

(10) On the giving of any further directions under paragraph (9) the Clerk shall send a copy of the relevant directions to each of the parties to the same issues proceedings.

(11) Where one or more of the same issues proceedings or the lead case was pending before the General Commissioners, the Clerk shall also send the notice of the matters specified in paragraphs (1) to (3) and (7) to (9) to the Clerk to the division or, as the case may be, each division of the General Commissioners concerned.

(12) Where a direction has been given for any proceedings to be heard as a lead case and those proceedings are withdrawn or discontinued either before or during the hearing, the Revenue shall—

- (a) within seven days of withdrawal or discontinuance as the case may be, give notice to—
 - (i) the Presiding Special Commissioner;
 - (ii) as appropriate, the Clerk to the relevant division of the General Commissioners;
 - (iii) all the parties to the same issues proceedings; and
- (b) the Presiding Special Commissioner may then direct that—
 - (i) one of the remaining same issues proceedings be substituted as the lead case; and
 - (ii) may also direct the extent to which any directions made prior to substitution shall be binding in relation to the substituted proceedings.

(13) On the giving of directions under paragraph (12)(b) the Clerk shall send a copy of the directions to all the remaining parties to the same issues proceedings and as appropriate, to the Clerks to the relevant divisions of the General Commissioners.

(14) Any same issues proceedings that were pending before the General Commissioners which the Presiding Special Commissioner considers are not appropriate for the lead case procedure shall be remitted to the General Commissioners for determination.

(15) References in this regulation to proceedings pending before the General Commissioners are references to proceedings pending in relation to which the General Commissioners (Jurisdiction and Procedure) Regulations 1994 apply.

(16) References in this regulation to “proceedings” shall for the avoidance of doubt, include more than one appeal against the same decision to the Special Commissioners or the General Commissioners as the case may be.”.

6. For regulation 15 substitute—

“Hearings in public

15.—(1) Subject to the following paragraphs of this regulation, hearings before a Tribunal shall be in public.

- (2) A Tribunal may direct that all or part of a hearing shall be in private—
 - (a) upon the application of all the parties by notice to the Clerk;
 - (b) upon the application of any party by notice to the Clerk;
 - (c) of its own motion,

if in each case, a Tribunal is satisfied that a hearing in private is necessary—

- (i) in the interests of morals, public order, national security, juveniles or for the protection of the private life of the party; or
- (ii) it considers that publicity would prejudice the interests of justice.

(3) Before determining an application under paragraph (2)(b), or giving a direction under paragraph (2)(c), a Tribunal shall give all other parties to the proceedings an opportunity to make representations.

(4) Before giving a direction under paragraph (2) that the entire hearing be in private, a Tribunal shall consider whether only part of the hearing should be heard in private.

(5) The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal notwithstanding that the hearing or part of the hearing takes place in private, and those referred to in sub-paragraphs (b) to (e) only may remain during the deliberations of a Tribunal but shall take no part in those deliberations—

- (a) the parties and their representatives;
- (b) the Presiding Special Commissioner and any of the Special Commissioners to the extent that they do not constitute the Tribunal or part of the Tribunal for the purpose of the hearing;
- (c) the Clerk and any of the staff of the Special Commissioners;
- (d) a member of the Council on Tribunals or of the Scottish Committee of that Council in the capacity of member;
- (e) a member of the Judicial Studies Board or of one of its committees in the capacity of member.

(6) A Tribunal, with the consent of the parties, may permit any other person to be present at the hearing of proceedings before it which is to take place, or part of which is to take place, in private.

(7) A Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of a Tribunal, has disrupted or is likely to disrupt the hearing.

(8) Where all or part of a hearing is held or is to be held in private, a Tribunal may direct that information about the whole or part of the proceedings (including information that might help to identify any person) before a Tribunal shall not be made public.

(9) For the purpose of paragraph (2)(i) “party” shall not include the Revenue.”.

Amendments to the General Commissioners (Jurisdiction and Procedure) Regulations 1994

7. Amend the General Commissioners (Jurisdiction and Procedure) Regulations 1994 in accordance with the provisions of regulations 8 to 10 below.

8. In regulation 2—

- (a) in the definition of “proceedings” after paragraph (c) add
 - “(d) any appeal to the General Commissioners under Part II of the Transfer Act or Part III of the Transfer Order;
 - (e) any appeal to the General Commissioners under regulations 8(6) and 14(4) of the Working Tax Regulations;”.
- (b) after the definition of “the Taxes Acts” insert—
 - ““the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999;
 - “the Transfer Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999;”.
- (c) in the definition of “Tribunal” for “brought.” substitute “brought;”.
- (d) after the definition of “Tribunal” insert—

““the Working Tax Regulations” means the Working Tax Credit (Payment by Employers) Regulations 2002(9).”.

9. After regulation 6 insert—

“Lead Cases

6A.—(1) Where—

- (a) one or more proceedings under Part II of the Transfer Act or Part III of the Transfer Order have been brought before, but have not yet been heard, by General Commissioners for one or more divisions, and
- (b) those proceedings give rise to common or related issues of fact or law (“same issues proceedings”)

the General Commissioners or each of the General Commissioners for each division as the case may be, shall arrange for transfer of those proceedings to the Special Commissioners.

(2) Before transferring any same issues proceedings the appropriate General Commissioners shall give all the parties to the proceedings in question an opportunity to make representations.

(3) For the purpose of this regulation “proceedings” shall for the avoidance of doubt, include more than one appeal against the same decision to the General Commissioners.”.

10. For regulation 13 substitute—

“Hearings in public

13.—(1) Subject to the following paragraphs of this regulation, hearings before a Tribunal shall be in public.

- (2) A Tribunal may direct that all or part of a hearing shall be in private—
 - (a) upon the application of all the parties by notice to the Clerk;
 - (b) upon the application of any party by notice to the Clerk;
 - (c) of its own motion,

if in each case, a Tribunal is satisfied that a hearing in private is necessary—

- (i) in the interests of morals, public order, national security, juveniles or for the protection of the private life of the party; or
- (ii) if it considers that publicity would prejudice the interests of justice.

(3) Before determining an application under paragraph (2)(b) or giving a direction under (2)(c) a Tribunal shall give all other parties an opportunity to make representations.

(4) Before giving a direction under paragraph (2) that the entire hearing be in private, a Tribunal shall consider whether only part of the hearing should be heard in private.

(5) The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal notwithstanding that the hearing or part of the hearing takes place in private, and those referred to in sub-paragraphs (b) to (e) only may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

- (a) the parties and their representatives;
- (b) the Clerk and any of the staff of the General Commissioners;

- (c) a member of the Council on Tribunals or of the Scottish Committee of that Council in the capacity of member;
 - (d) any of the Special Commissioners;
 - (e) a member of the Judicial Studies Board or of one of its Committees in the capacity of member.
- (6) A Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of a Tribunal, has disrupted or is likely to disrupt the hearing.
- (7) A Tribunal, with the consent of the parties, may permit any other person to be present at the hearing of proceedings before it which is to take place, or part of which is to take place, in private.
- (8) Where all or part of a hearing is held or is to be held in private, a Tribunal may direct that information about the whole or part of the proceedings (including information that might help to identify any person) before a Tribunal shall not be made public.
- (9) For the purposes of paragraph (2)(i) “party” shall not include the Revenue.”.

Signed by authority of the Lord Chancellor

Dated 23rd November 2002

Rosie Winterton
Parliamentary Secretary,
Lord Chancellor’s Department

The Scottish Ministers consent to the making of these Regulations.

Dated 25th November 2002

James Wallace
Deputy First Minister, Minister for Justice, A
Member of the Scottish Executive

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 (S.I. 1994/1811) (“the Special Commissioners Regulations”) and the General Commissioners (Jurisdiction and Procedure) Regulations 1994 (S.I. 1994/1812) (“the General Commissioners Regulations”). The definitions of proceedings are amended to include appeals under Part II of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (“the Transfer Act”) and Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (“the Transfer Order”), which respectively transfer from the Secretary of State to the Commissioners of Inland Revenue or the Treasury certain functions relating to social security contributions, statutory sick pay or pension schemes and certain associated functions relating to benefits. These Regulations similarly include appeals under regulation 14(4) of the Working Tax Credit (Payment by Employers) Regulations 2002 within the definition of proceedings in the Special Commissioners Regulations and also amend that definition in the Special Commissioners Regulations to include within it preliminary proceedings, held in accordance with regulation 9.

These Regulations also amend the Special Commissioners Regulations and General Commissioners Regulations to provide for lead cases under the Transfer Act and the Transfer Order. They also provide (subject to some exceptions) for appeals to the Special and General Commissioners to be heard in public, and provide for other minor amendments.

Regulations 3 to 6 amend the Special Commissioners Regulations.

Regulation 3 amends regulation 2 to include the appeals referred to above and preliminary hearings within the definition of “proceedings” in that regulation.

Regulation 4 amends regulation 7(1) to provide for any Special Commissioner rather than the Presiding Special Commissioner to direct that proceedings be heard at the same time or consecutively and by the same Tribunal.

Regulation 5 inserts a new Regulation 7A which sets out the procedure to be applied in relation to appeals which raise same issues under Part II of the Transfer Act or Part III of the Transfer Order.

The Presiding Special Commissioner may of his own motion or on application by a party to any of those proceedings direct that one such appeal be heard as the lead case and that for procedural purposes all other appeals which raise the same issues be stayed pending determination of the same issues in the lead case.

Regulation 6 substitutes a new Regulation 15 providing for all hearings to be in public and also contains further consequential provisions for the conduct of hearings.

Regulations 8 to 10 amend the General Commissioners Regulations.

Regulation 8 provides for similar amendments (but in addition includes reference to appeals under regulation 8(6) of the Working Tax Credit (Payment by Employers) Regulations 2002) to those made to regulation 2 of the Special Commissioners Regulations.

Regulation 9 provides for appeals which raise same issues under Part II of the Transfer Act or Part III of the Transfer Order to be transferred, after giving the parties the opportunity to be heard, to the Special Commissioners so that they may be determined in accordance with the lead case procedure under new Regulation 7A of the Special Commissioners Regulations.

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Regulation 10 mirrors the provisions contained in new Regulation 15 of the Special Commissioners Regulations providing for all hearings to be in public and also contains further consequential provisions for the conduct of hearings.