

2009 No. 777

TRIBUNALS AND INQUIRIES

The Revenue and Customs Appeals Order 2009

Made - - - - *24th March 2009*

Coming into force - - *1st April 2009*

The Treasury make the following Order in exercise of the powers conferred by sections 124(1) to (7) of the Finance Act 2008(a).

A draft of this Order was laid before and approved by resolution of the House of Commons in accordance with section 124(8) of the Finance Act 2008.

Citation and commencement

1. This Order may be cited as the Revenue and Customs Appeals Order 2009 and comes into force on 1st April 2009.

Amendment of the Oil Taxation Act 1975

2. For paragraph 14(11) of Schedule 2 to the Oil Taxation Act 1975(b) (management and collection of petroleum revenue tax) substitute—

“(11) When an appeal is notified to the tribunal, the decision of the tribunal on the appeal is final and conclusive.

(12) But sub-paragraph (11) is subject to—

- (a) sections 9 to 14 of the Tribunals, Courts and Enforcement Act 2007(c),
- (b) Tribunal Procedure Rules, and
- (c) any provision of this Schedule.”.

Amendment of the Social Security Contributions (Transfer of Functions, etc.) Act 1999

3. After section 13(2) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(d) insert—

(a) 2008 c. 9.
(b) 1975 c. 22. Paragraph 14(11) was amended by S.I. 2009/56 which comes into force on 1st April 2009.
(c) 2007 c. 15.
(d) 1999 c. 2. Section 13 was also amended by S.I. 2009/56.

“(2A) Regulations under subsection (1) above may provide for sections 11(2) and 13(2) of the Tribunals, Courts and Enforcement Act 2007(a) to apply with such modifications as may be specified in the regulations in relation to an appeal to the tribunal under this Part.”.

Amendment of the Counter-Terrorism Act 2008

4. The Schedule contains amendments to the Counter-Terrorism Act 2008(b).

Amendment of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

5. After article 12(2) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999(c) insert—

“(2A) Regulations under paragraph (1) above may provide for sections 11(2) and 13(2) of the Tribunals Courts and Enforcement Act 2007 to apply with such modifications as may be specified in the regulations in relation to an appeal to the tribunal under this Part.”.

Amendment of the Social Security Contributions (Decisions and Appeals) Regulations 1999

6. For regulation 12 of the Social Security Contributions (Decisions and Appeals) Regulations 1999(d) substitute—

“Appeals from the tribunal

12—(1) Section 56 of the Management Act (payment of tax where there is a further appeal) shall apply to appeals from the tribunal under Part II of the Transfer Act and Part III of the Transfer Order.

(2) For the purposes of sections 11(2) and 13(2) of the Tribunals, Courts and Enforcement Act 2007(e) a party to the case includes—

- (a) the appellant and HMRC;
- (b) in the case of an appeal against a decision relating to a person’s entitlement to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, the employee or employer concerned; and
- (c) in any other case, any other person named in the decision.”.

Amendment of the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009

7. Omit paragraph 74(7) of Schedule 1 and paragraph 67 of Schedule 2 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009(f).

*Dave Watts
Tony Cunningham*

24th March 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2007 c. 15.
(b) 2008 c. 28.
(c) S.I.1999/671. Paragraph 12 was also amended by S.I. 2009/56.
(d) S.I.1999/1027. Regulation 12 was also amended by S.I. 2009/56.
(e) 2007 c. 15.
(f) S.I. 2009/56.

Counter-Terrorism Act 2008

1. Schedule 7 to the Counter-Terrorism Act 2008(a) is amended as follows.
- 2.—(1) Paragraph 26 is amended as follows.
 - (2) In the heading omit “and reviews”.
 - (3) In sub-paragraph (2)—
 - (a) in paragraph (c) for “this paragraph” substitute “paragraph 26A”; and
 - (b) in paragraph (d) for “paragraph 28” substitute “this paragraph”.
 - (4) For sub-paragraphs (3) to (6) substitute—
 - “(3) The person may appeal to the tribunal against the decision in accordance with paragraph 26F.
 - (4) On the appeal the tribunal may—
 - (a) set aside the decision appealed against, and
 - (b) impose any penalty that could have been imposed by HMRC or remit the matter to HMRC.
 - (5) In this paragraph, and in paragraphs 26A to 26F, “tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.
 - (6) Section 85 of the Value Added Tax Act 1994 (settling appeals by agreement)(b) shall apply to appeals under this paragraph as if the reference to section 83 of that Act included a reference to this paragraph.”.
3. After paragraph 26 insert—

“Offer of review

- 26A** (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under paragraph 26 in respect of the decision.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This paragraph does not apply to the notification of the conclusions of a review.

Review by HMRC

- 26B** (1) HMRC must review a decision if—
 - (a) they have offered a review of the decision under paragraph 26A, and
 - (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the tribunal under paragraph 26F.
- (3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

(a) 2008 c. 28.
 (b) 1994 c. 23. Section 85 was amended by S.I. 2009/56.

Extensions of time

26C (1) If under paragraph 26A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.

- (2) If notice is given the relevant period is extended to the end of 30 days from—
- (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
- (3) In this paragraph “relevant period” means—
- (a) the period of 30 days referred to in paragraph 26B(1)(b), or
 - (b) if notice has been given under sub-paragraph (1) that period as extended (or as most recently extended) in accordance with sub-paragraph (2).

Review out of time

26D (1) This paragraph applies if—

- (a) HMRC have offered a review of a decision under paragraph 26A, and
- (b) P does not accept the offer within the time allowed under paragraph 26B(1)(b) or 26C(2).

(2) HMRC must review the decision under paragraph 26B if—

- (a) after the time allowed, P notifies HMRC in writing requesting a review out of time,
- (b) HMRC are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
- (c) HMRC are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.

(3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

Nature of review etc

26E (1) This paragraph applies if HMRC are required to undertake a review under paragraph 26B or 26D.

(2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(3) For the purpose of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—

- (a) by HMRC in reaching the decision, and
- (b) by any person in seeking to resolve disagreement about the decision.

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

(5) The review may conclude that the decision is to be—

- (a) upheld,
- (b) varied, or
- (c) cancelled.

(6) HMRC must give P notice of the conclusions of the review and their reasoning within—

- (a) a period of 45 days beginning with the relevant date, or
- (b) such other period as HMRC and P may agree.

(7) In sub-paragraph (6) “relevant date” means—

- (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within paragraph 26A), or
- (b) the date on which HMRC decided to undertake the review (in a case falling within paragraph 26D).

(8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in sub-paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If sub-paragraph (8) applies, HMRC must notify P of the conclusion which the review is treated as having reached.

Bringing of appeals against decisions of HMRC

26F (1) An appeal under paragraph 26 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
- (b) if later, the end of the relevant period (within the meaning of paragraph 26C).

(2) But that is subject to sub-paragraphs (3) to (5).

(3) In a case where HMRC are required to undertake a review under paragraph 26B—

- (a) an appeal may not be made until the conclusion date, and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(4) In a case where HMRC are requested to undertake a review in accordance with paragraph 26D—

- (a) an appeal may not be made—
 - (i) unless HMRC have decided whether or not to undertake a review, and
 - (ii) if HMRC decide to undertake a review, until the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with—
 - (i) the conclusion date (if HMRC decide to undertake a review), or
 - (ii) the date on which HMRC decide not to undertake a review.

(5) In a case where paragraph 26E(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 26E(6) to the date 30 days after the conclusion date.

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

(7) In this paragraph “conclusion date” means the date of the document notifying the conclusions of the review.”.

4.—(1) Paragraph 28 is amended as follows.

- (2) In the heading after “penalty” insert “other than by HMRC”.
- (3) In sub-paragraph (1) omit “—”, paragraph (a) and the “(b)” after paragraph (a).
- (4) Omit sub-paragraph (4).
- (5) In sub-paragraph (6) omit paragraph (a).
- (6) In sub-paragraph (7) omit “(a),”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1st April 2009. It follows the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009(a) (“the original Order”) which implements the main transfer of Her Majesty’s Revenue and Customs appeals to the new tribunal system and provides for a review of appealable decisions.

This Order provides new review provisions in relation to HMRC aspects of the appeals provisions introduced by the Counter-Terrorism Act 2008(b) and replaces two provisions in the original Order so that rights of further appeal are retained (in the Oil Taxation Act 1975(c) and the Social Security Contributions (Decisions and Appeals) Regulations 1999(d)).

Article 1 provides for citation and commencement.

Articles 2 and 6 replace the provisions relating to rights of further appeal and Article 7 omits the two provisions from the original Order.

Articles 3 and 5 amend the relevant section of the Social Security Contributions (Transfer of Functions etc.) Act 1999(e) (and its Northern Ireland counterpart) to allow for any further amendment of regulation 12 of the Social Security Contributions (Decisions and Appeals) Regulations 1999.

Article 4 and the Schedule insert the new review provisions into the Counter-Terrorism Act 2008.

An Impact Assessment has not been prepared in respect of this Order. An Impact Assessment covering the changes made by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 was published with that Order. A copy is annexed to the Explanatory Memorandum to that Order, which is available alongside the instrument on the OPSI website.

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- (a) S.I. 2009/56.
 - (b) 2008 c. 28.
 - (c) 1975 c. 22. Paragraph 14(11) of Schedule 2 was amended by S.I. 2009/56.
 - (d) S.I. 1999/1027. Regulation 12 was amended by S.I. 2009/56.
 - (e) 1999 c. 2.

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STATUTORY INSTRUMENTS

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