



Tax Appeals Stakeholder Group

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**Paper No. 3 – the proposed Courts and Tribunals Bill:
the context for tax appeal reform**

SG02/03

Foreword

Document Control

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Document Purpose: This document provides background information and sets out the current tax tribunal position.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	23/03/05	Leueen Fox	First draft for internal comments.
1.0	31/01/05	Leueen Fox	Version for stakeholder group

INTRODUCTION

1. The position paper (SG01/02), presented in preparation for the first tax modernisation stakeholder group meeting, described the proposed broad parameters of the Courts and Tribunals Bill and what specific processes and structures within the existing tax tribunals would be affected by those measures. This paper attempts to give further detail so that the group can consider their recommendations for a reformed tax jurisdiction within the proposed overarching legislative structure.
2. A basic tenet of the White Paper is that disputes should be resolved at the earliest possible stage; in a manner that is proportionate to the issue and there is no 'one size fits all' requirement. So the system should have flexible procedures and processes that can accommodate cases ranging from the legally and financially complex, where the parties will be represented by counsel, through to appeals against penalties or surcharges where unrepresented taxpayers turn up on the day to argue their case in person. In many cases the outcome of reform may be that cases continue to be heard and processed as they are now, in some it may mean a greater emphasis on judicial activity in the pre-hearing period and for others it may result in a less legalistic and formalised approach to both process and hearing.
3. The concept of flexibility also underpins proposals for the new tribunal and judicial structures. This is particularly apposite in terms of tax appeal reform previous attempts have been hamstrung by the proscriptive structures set in primary legislation. However flexibility does not equate to a lack of accountability or clarity – the intent is to legislate in such a way that the basic enabling structure is set in primary legislation with secondary legislation and practice directions setting out the detail. For example, panel constitution for classes of cases will not be set out in secondary legislation but will be directed by the judiciary (or their delegates) according to the needs of the appeal.

PROPOSED STRUCTURES

4. The table below sets out the key features of the structures that will be proposed within the Courts and Tribunals Bill (items within [] are White Paper commitments rather than proposed Bill content). The table also attempts to describe how those structures translate into the tax appeals context to enable to group to develop recommendations, which fit within the new structures.

PROPOSED COURTS AND TRIBUNALS BILL MEASURE	AFFECT ON TAX JURISIDITION
Creation of unified first and second tier tribunals	Existing individual tribunal structures cease once the jurisdiction becomes part of the new first or second tier
Creation of broad judicial offices (legal and non-legal at both tiers) [There will also be a review of all judicial roles within the tribunals structures]	Existing judicial offices are mapped across to the new offices unless otherwise specified ie to address the resource/workload issues for General Commissioners. Only existing appellate tribunal members will be mapped across into the new unified appellate tier. There will be specified terms and conditions for judiciary

<p>All appeals will be made to the new first tier Tribunal unless</p> <ul style="list-style-type: none"> • there is specific provision for them to be heard at the appellate tier at the first instance or • the Senior President (or his delegate) so directs 	<p>Right of election to General or Special Commissioners ceases (there are no Special or General Commissioners to elect between)</p>
<p>The first and second tier tribunal geographical jurisdiction will be the same as that of the decision-making authority. There will be no sub-divisions set in legislation</p>	<p>No Divisional structure for General Commissioners. Once appointed judicial office holders within the grouping will be able to sit anywhere within the tribunal jurisdiction ie across the UK</p> <p>Appointments to new Tribunal will be valid across the geographic limits of the particular jurisdiction</p>
<p>Within the first tier jurisdictions will be 'grouped' and legally qualified judiciary may be deployed across groups (subject to their experience and qualifications) by the jurisdictional Presidents.</p> <p>Groupings will not be set in primary legislation.</p>	<p>Direct and indirect tax issues will be grouped together.</p> <p>Tax Credit and Child Trust Fund appeals relating to the receipt will be heard within the benefits grouping. Groupings will be re-considered as, if and when the tax, tax credit and benefit systems move closer together</p>
<p>Creation of Senior and jurisdictional Presidents who will set requirements for appraisal and training</p>	<p>Judicial oversight throughout the jurisdiction. Mandatory requirements for appraisal and training set by senior judiciary</p>
<p>Authorised officers (DCA employees) responsible for the non-judicial aspects of tribunal work</p>	<p>Office of Clerk to General Commissioners ceases</p>
<p>A second, appellate tier will hear appeals from the first tier, subject to a permission requirement, on a point of law.</p>	<p>Appeals from first instance tribunal no longer made to the High Court (in England and Wales); Court of Session (in Scotland) or Court of Appeal (in Northern Ireland). There will be no ability to 'skip' the appellate tier. There will be no requirement for cases to be stated prior to an onward appeal .</p>
<p>Decisions of the appellate tier are binding on the first tier</p>	<p>Decisions of the appellate tier are binding on the first tier</p>
<p>Subsequent appeals on permission and a point of law to the Court of Appeal (England and Wales; and Northern Ireland/Court of Session (Scotland)</p>	<p>Appeals from the appellate tribunal with permission and on a point of law to the Court of Appeal (England and Wales; and Northern Ireland)/Court of Session (Scotland).</p>

	There will be no ability to 'skip' the appellate tier.
A Tribunals Procedure Committee will be created (similar to the Civil Procedure Rules Committee) to make both overarching and jurisdictional rules. The Committee's membership will be flexible to allow jurisdictional expertise to be incorporated where appropriate.	Revised rules for the tax tribunals will be required on transfer into the new structures as there are currently three sets governing the existing tribunals. There will at least have to be a single set for direct tax cases.
The High Court will be empowered to delegate its inherent judicial review jurisdiction to the appellate tier of the tribunal either by class of case or on a case by case basis (but see note on extent of jurisdiction below).	The tax 'chamber' of the appellate tier may also encompass certain areas of judicial review
Legally qualified judiciary will have the ability to award costs within defined parameters. [Details of the circumstances under which costs might be awarded will be set through the proposed Tribunals Procedure Committee]	Consistent approach to costs across the jurisdiction

TRANSITORY PROVISIONS

5. Tax Credits and Child Trust Funds are both administered by the Inland Revenue however under current transitory arrangements most appeals¹ on these areas are heard by the Appeals Service and Social Security Commissioners until tax tribunals are reformed. The creation of the new tribunal infrastructure, within which both the tax tribunals and the Appeals Service will be absorbed, renders this provision redundant. Tax Credit and Child Trust Fund Appeals will all be heard within the first tier of the new tribunal by suitably qualified judiciary and will be grouped with like issues. The new flexible structures will allow for groupings to extend and alter as required.

EXTENT OF JURISDICTION

6. The proposed legislation and new Tribunals Service will not affect the processes of decision –making within the parent department. Where statutory or non-statutory reviews take place currently they will continue. For direct tax this means that the existing Section 54 provisions remain intact as will the lodging of the appeal with IR. However work is on-going within DCA and IR on guidelines to regulate the amount of time that an appeal can remain under discussion between IR and the taxpayer before reference to the tribunal. The intention is that an agreed time limit will be set beyond which an appeal must be referred to the tribunal (unless both parties agree a longer discussion period). Publishing this limit as part of IR departmental guidance makes compliance with the limit mandatory on IR staff and complaints subject to review by the Adjudicator.
7. Within decision-making bodies there are generally decisions subject to statutory appeal and others which can only be challenged by judicial review or redress sought through the Adjudicator. It has been argued that the extent of the tribunal jurisdiction should be extended to encompass non-statutory disputes in relation to a taxpayer's reliance on advice and guidance or the use of extra-statutory concessions. In addition there is a considerable distinction in the extent of the

¹ Other than those relating to employers or direct tax matters

VAT and duties tribunal's remit between considerations under UK legislation and the Community Customs Code. Such issues extend in their application beyond the tax jurisdiction. There is no intention to alter the existing balance between statutory appeal and non-statutory judicial review at present although the High Court will have the power to delegate their judicial review function to the appellate tier (either on a class by class or individual case basis).

OTHER MEASURES

8. However there are aspects of the overall proposals that do not require legislation but which will inform the overall approach and culture for reform. These range from better explanation of decisions by the original decision-maker through proportionate dispute resolution to a feedback loop from the tribunals back to the originating departments to draw attention to poor standards, inconsistent decision-making etc (see paper SG02/02) The stakeholder group will consider where opportunities lie within a reformed system for putting these into operation.

THE WORK OF THE STAKEHOLDER GROUP

9. There are some fundamental issues that the group will need to address before moving on to issues of more detail or where the group will want to make observations to play into themes (such as training or costs regimes) which will be dealt with across the new tribunal structure rather than within the tax area. The following is an attempt to list those issues in a logical sequence
 - key characteristics of a reformed tax appeal system – SG02/04
 - broad design option taking into account cost, efficiency and deliverability
 - parameters of case categorisation (including for first hearing at second tier)/panel constitution
 - case management processes (including delegation)
 - paper hearings
 - using alternative dispute resolutions within the reformed tribunal
 - consider training requirements for judiciary
 - awarding costs