

The Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005 - Draft

Consultation Paper

CP(L) 2/05

7 January 2005

This consultation will end on 28/01/2005

**The Special Commissioners (Jurisdiction
and Procedure) (Amendment) Regulations
2005 - Draft**

Contents

The proposals	4
The Child Trust Fund and its legislative background	6
Child Trust Fund tax appeals	9
About you	10
How to respond	11
Consultation Co-ordinator contact details	13
The Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005 - draft	ANNEX A

The proposals

This paper sets out for consultation a routine amendment to the Special Commissioners (Jurisdiction and Procedure) Regulations 1994.

The Child Trust Funds Act 2004 gives power for regulations to be made in connection with various aspects of the Child Trust Fund (CTF), including appeals against decisions made by the Inland Revenue.

A Department for Constitutional Affairs consultation exercise on Regulations to allow the Office of the Social Security and Child Support Commissioners to hear onward Child Trust Funds non-tax appeals from Appeals Service appeals tribunals ended today, 7 January. This is a transitory arrangement, set out in section 24 of the Child Trust Funds Act 2004, which will apply until a day appointed by the Treasury by Order, which will not be until the tax tribunals are reformed (a planned Courts and Tribunals Bill will propose wide scale reforms to the whole tribunals system and will include the modernisation of the tax appeals system within the framework of a new Tribunals Service).

However, CTF appeals against an assessment of tax will be dealt with within the normal tax appeals system immediately. To enable the Special Commissioners of Income Tax to hear CTF tax appeals, Regulation 2 of the attached draft Regulations amends the definition of 'proceedings' in Regulation 2 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994.

The current expectation is that there will be only a very small number of CTF tax appeals, if any, because the Inland Revenue, which will administer the CTF, anticipates that the procedures it has in place will lead to most disputes being resolved in other ways before reaching appeal. However, it is, of course, necessary to ensure procedures are put in place to deal with CTF tax appeals, should any arise.

The key features of the CTF have been developed during a long period of formal and informal consultation by the Government with likely providers of the CTF, consumer organisations and other stakeholders. Although in the main this further consultation follows the Code of Practice on Consultation issued by the Cabinet Office, Baroness Ashton, Parliamentary Under Secretary at the Department for Constitutional Affairs, has decided that because this is a minor, procedural amendment and only a short time is available before planned implementation, a consultation exercise of 3 weeks covering bodies in England, Wales, Scotland and Northern Ireland with a specific interest in the issue dealt with by the draft SI, is appropriate.

When considering these draft Regulations you may wish to be aware of a consultation (reference: CP(L) 1/05), also beginning today, that is being carried out about the General Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005, which will amend the General Commissioners (Jurisdiction and Procedure) Regulations 1994 to allow General Commissioners of Income Tax to hear CTF tax appeals. They will also remedy a defect in existing regulations, to allow Stamp Duty Land Tax appeals from the General Commissioners of Income Tax to the High Court to be by way of the 'case stated' procedure, in common with other tax appeals – an amendment on which a separate consultation exercise has already been carried out.

A full list of the organisations which are being sent a copy of this consultation document is set out on page 5. The consultation paper will also be placed on the DCA Website at: www.dca.gov.uk

Regulatory Impact Assessment

A full, final Regulatory Impact Assessment (RIA) of the Child Trust Fund was produced by the Inland Revenue in November 2003 - you can see this RIA at: http://www.inlandrevenue.gov.uk/ria/ria_final_child_trust_fund.pdf . The limited changes proposed in these draft Regulations do not indicate that any groups are likely to be particularly affected by these Regulations and they are unlikely to lead to additional costs and savings for businesses, charities or the voluntary sector, or on the public sector. Consequently, no Regulatory Impact Assessment accompanies this paper. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

We look forward to receiving your comments on the draft Regulations at Annex A.

Copies of the consultation paper are being sent to:

The Council on Tribunals

The Presiding Special Commissioner of Income Tax

The National Assembly for Wales

The Scottish Executive Justice Department

The Northern Ireland Court Service

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

1. A brief explanation of the Child Trust Fund and its legislative background

Key features of the Child Trust Fund

1. The Child Trust Funds Act 2004 provides for Child Trust Fund (CTF) accounts to be opened for all eligible children born on or after 1 September 2002. A child will be eligible if Child Benefit has been awarded for them and they are living in the UK.
2. The CTF is a savings and investment account for children. The Government will make contributions to this account with an additional payment for children from lower income families. In addition to the Government contributions, the child's family and friends will also be able to subscribe to the account up to an annual limit. The funds will be locked into the account until the child reaches the age of 18.
3. There are 4 main objectives for the CTF:
 - to help people to understand the benefits of saving and investing
 - to encourage parents and children to develop the saving habit and to engage with financial institutions
 - to ensure that in future all children have a financial asset at the start of adult life, and
 - to build on financial education.

Around 700 000 children a year will receive a CTF account.

Timing of the CTF scheme

4. The CTF scheme is expected to begin on 6 April 2005. However, there will be around 1.9 million children, born on or after 1 September 2002 and before the launch date, who will be entitled to CTF accounts at the launch, and who it is intended should receive their Government contributions at the start of the scheme. In order to help providers and the Inland Revenue manage this work, the commencement date for certain provisions was brought forward to 1 January 2005.

Appeals

5. The Tax Credits Act 2002 provides for appeals against decisions made by the Inland Revenue on tax credits to be heard by Appeals Service appeals tribunals, on a transitory basis, until the tax tribunals are reformed – as mentioned above, a planned Courts and Tribunals Bill will propose wide scale reforms to the whole tribunals system and will include the modernisation of the tax appeals system within the framework of a new Tribunals Service. The Tax Credits Act also provides for an onward right of appeal on a point of law to the Social Security Commissioners.
6. Many potential 'non-tax' CTF appeals are likely to involve appeals against child benefit and tax credit awards. It is, therefore, considered sensible for such CTF appeals to follow the approach adopted for tax credits and arrange for them to be dealt with by the Appeals Service, and further appeals by the Social Security Commissioners, until the tax tribunals are reformed. This is, therefore, a transitory arrangement which will apply until a day appointed by the Treasury by Order.
7. CTF appeals against an assessment of tax will, though, be heard within the normal tax appeals system. The attached draft Regulations and the equivalent draft General Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005 will allow this to happen.

Legislative background

8. The Child Trust Funds Bill received Royal Assent on 13 May 2004 and became the Child Trust Funds Act 2004.
9. The Child Trust Funds Act gives power for regulations to be made in connection with various aspects of the CTF. The first use of these powers was for The Child Trust Funds Regulations 2004 (SI 2004 No. 1450), which were made and laid before Parliament on 27 May 2004 and which came into force on 1 January 2005 for some introductory provisions, but mainly on the day the Act is brought into force, which is expected to be 6 April 2005.
10. Three more sets of Child Trust Funds Regulations have since been made: the Child Trust Funds (Amendment) Regulations 2004 (SI 2004 No 2676) - the second set of regulations made under the Child Trust Funds Act 2004 -, which supplement and amend the main CTF regulations, including providing for early access to Child Trust Fund accounts for terminally ill children; the Child Trust Funds (Insurance Companies) Regulations 2004 (SI 2004 2680) - made under powers in section 333B of the Income and Corporation Taxes Act 1988 as extended to CTF business by section 14 of the Child Trust Funds Act 2004 - which provide for the exemption from corporation tax of income and gains that arise to an insurance company providing child trust funds, so far as it relates to the company's CTF business; and the Child Trust Funds (Amendment No 2) Regulations 2004 (SI 2004 No 3382) which provide for the role of the Official Solicitor and in Scotland the Accountant of Court in managing the CTF accounts of those looked after children (children in care) who have no one with parental responsibility.

11. In addition to the existing sets of regulations, three further sets of regulations, all dealing with CTF non-tax appeals, have now been drafted. All of these sets of regulations are due to be made at around the same time.
12. The first of the 3 sets to be made, the Child Trust Funds (Non-tax Appeals) Regulations 2004, will be made by the Treasury in exercise of the powers conferred upon it by sections 23(1), 24(5) and 28(1) to (4) of the Child Trust Funds Act 2004. These regulations will modify relevant parts of the Social Security Act 1998 and the Northern Ireland counterpart order (see below). They will follow closely the Tax Credits (Appeals) Regulations 2002 (SI 2002 No. 2926).
13. Next to be made, by the Department for Work and Pensions (DWP), will be the Child Trust Funds (Appeals) Regulations 2005, which will allow appeals tribunals in the Appeals Service to hear Child Trust Funds appeals. These will follow closely the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No. 991).
14. The DWP's Regulations will be followed by the Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005, which contain a 'sunsetting' provision and will cease at some future date when a relevant order is made.
15. The attached draft Regulations are intended to allow the Special Commissioners of Income Tax to hear CTF Tax appeals. The equivalent Regulations for the General Commissioners of Income Tax, due to come into force around the same time, will allow the General Commissioners to do the same.

Extent

16. The Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005 will apply to England, Wales, Scotland, and Northern Ireland.

2. Child Trust Fund Tax Appeals

1. The temporary modification to the CTF tax appeals system as set out in section 24 of the Child Trust Funds Act 2004 does not apply to decisions on a provider's annual tax claim or assessments made to recover tax relief, dealt with in the CTF regulations. Therefore, appeals about these decisions will be dealt with from the outset within the tax appeals system.
2. Under the Child Trust Funds Regulations 2004 (the CTF Regulations), an appeal may be made against the Inland Revenue's decision on an annual tax claim or against any assessment to recover tax.
3. More specifically, there are two situations in which CTF tax appeals can be made:
 - under CTF regulation 28(3), an appeal can be made to the Special Commissioners of Income Tax from the Inland Revenue's decision on an annual tax claim lodged by a CTF account provider (that is, a person who fulfils the conditions of the Child Trust Funds Regulations 2004, and is approved by the Inland Revenue for the purpose of those Regulations as an account provider). Only the account provider can appeal this because only the account provider can lodge an annual tax claim; and
 - an appeal can be lodged under Section 31(d)1 of the Taxes Management Act 1970 against an assessment made by the Inland Revenue under CTF regulation 29(1). An assessment under this regulation is made to recover any tax relief or tax exemption due on the income or gains from investments held in a CTF which is found not to be due or excessive. In this case the Inland Revenue can raise an assessment on the CTF account provider, the child in whose name the CTF account is held, or the registered contact (that is, a person who may give instructions to an account provider with respect to an account's management), under Case VI, Schedule D (income tax assessments are raised under one of three schedules, A, D or F depending on the nature of the activity giving rise to the tax charge, by virtue of section 1(1) Taxes Act 1988, and in the case of assessments due under Schedule D, under one of six cases). Assessments to tax under CTF regulations are made under Case VI of Schedule D by virtue of CTF regulation 29(3). The appeal will go to the General Commissioners of Income Tax unless an election for the Special Commissioners of Income Tax is made.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 28 January to:

Duncan Rutty
Department for Constitutional Affairs
Administrative Justice Division
4th Floor East
Selborne House
54 Victoria Street
London
SW1E 6QW

Tel: 020 7210 0674

Fax: 020 7201 0681

Email: duncan.rutty@dca.gsi.gov.uk

Extra copies

Further copies of this consultation can be obtained on-line at
<http://www.dca.gov.uk/index.htm>

Publication of response

A letter summarising the responses to this consultation will be published in around 3 months' time. A copy of this letter will be available on-line at:
<http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gov.uk

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 11.

2005 No.

INCOME TAX

CAPITAL GAINS

TAXES

CHILD TRUST FUNDS

The Special Commissioners (Jurisdiction and Procedure)
(Amendment) Regulations 2005

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

The Lord Chancellor, in exercise of the powers conferred upon him by section 56B of the Taxes Management Act 1970(a), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunal and Inquiries Act 1992(b) and with the consent of the Scottish Ministers(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005 and shall come into force on the [].

(2) Any reference to a regulation by number alone means the regulation so numbered in the Special Commissioners (Jurisdiction and Procedure) Regulations 1994(d).

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

2. In regulation 2 in the definition of “proceedings” after paragraph (n) insert—

(a) 1970 c.9. Section 56B was inserted by section 76 of and paragraph 4 of Schedule 16 to the Finance (No.2) Act 1992 (c.48) and section 254(2) and (3) of the Finance Act 1994 (c.9).

(b) 1992 c.53.

(c) The functions of the Lord Advocate under section 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 (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 (S.I. 1999/1750).

(d) S.I. 1994/1811, amended by S.I. 1999/3292, S.I. 2000/288, S.I. 2002/2976, S.I. 2003/968 and S.I.2004/1363.

“(o) any appeal to the Special Commissioners under regulations made under section 13 of the Child Trust Funds Act 2004^(a) or any appeal to the Special Commissioners under section 22 of that Act;”.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Department for Constitutional Affairs

The Scottish Ministers consent to the making of these Regulations

Date

Name
A Member of the Scottish Executive

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 1994 Regulations”). Regulation 2 amends the regulation 2 of the 1994 Regulations to include appeals under regulations made under section 13 of the Child Trust Funds Act 2004 or appeals made under section 22 of that Act within the definition of “proceedings” in that regulation.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business.

^(a) 2004 c. 6.