

Reform of Section 703 Tribunal Appeal Routes

Response to Consultation

CP(R) 07/05

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**Response to consultation carried out by the Department
for Constitutional Affairs.**

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Introduction

This document is the post-consultation report for the consultation paper, 'Reform of Section 703 Tribunal Appeal Routes'.

It covers:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Claire Gray** at the address below:

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This report is also available on the Department's website at: www.dca.gov.uk

Background

The consultation paper 'Reform of Section 703 Tribunal Appeal¹ Routes' was published on 2 March 2005. It invited comments on proposals to reform the appeal routes arising from sections 703-709 of the 1988 Income and Corporation Taxes in line with the wider plans for administrative justice reform outlined in the White Paper "Transforming Public Services: Complaints Redress and Tribunals"².

The consultation paper proposed that the following appeal rights should be transferred from the Section 703 Tribunal and the Special Commissioners to the proposed new first tier tribunal:

- initial determination by the 703 Tribunal that there is a prima facie case for the Inland Revenue to cancel a tax advantage;
- the substantive right of appeal to the Special Commissioners after a notice cancelling an advantage has been issued.

It also proposed there be an onward right of appeal on a point of law, and with permission, to the appellate tier in line with the other jurisdictions transferring to the new tribunal structure. This right of appeal would replace the existing onward appeal routes from the Special Commissioners to the 703 Tribunal or High Court and the onward appeal right from the 703 Tribunal to the High Court.

The consultation was aimed at accountancy and legal professionals who advise clients on the application of Section 703 ICTA 1988 in the UK.

The Consultation period closed on 25 May 2005 and this report summarises the responses, including how the consultation process influenced the final shape of the proposal consulted upon.

A list of respondents is at Annex A.

¹ The Section 703 Tribunal was enacted under Section 28 of the Finance Act 1960.

² DCA Command Paper CM 6243, published on 15 July 2004, by The Stationery Office. The White paper can be accessed via the DCA website at <http://www.dca.gov.uk/pubs/adminjust/adminjust.htm>

Summary of responses

1. Eight responses to the consultation were received, of which seven contained comments on the proposals. Of these seven, two were from members of the Section 703 Tribunal judiciary. One was a response from the Special Commissioners. Two responses were from the accountancy profession. The Council of Tribunals also responded. We are grateful to all of those who took the time to respond.
2. The consultation sought views on proposals to reform the s703 Tribunal appeal routes in line with wider plans for administrative justice reform outlined in the White Paper. We analysed the responses for the degree of support or disagreement they expressed and took note of any other issues that emerged.
3. The consultation asked for comments on three questions: What is the best way of accommodating the initial consideration of whether a prima facie case exists into the proposed unified tribunal structure? What is the best way of dealing with substantive appeals against notices issued in relation to Section 703? What onward routes of appeal are needed to ensure adequate safeguards for appellants?
4. All of the responses gave close consideration to the questions and supported their views with examples and/or argument. All of the responses were broadly supportive of the proposals. The most frequently cited grounds for support were that reform would provide simplified appeal routes and offer administrative simplicity and clarity for the user. Nearly all the responses placed emphasis on the need for s703 issues to be decided by panels which offered an appropriate level of expertise and experience.
5. In the commentaries that follow, we have included any relevant comments that we received. We have tried to give samples of comments that represent the views as a whole.

Responses to Specific Questions

1. What is the best way of accommodating the initial consideration of whether a prima facie case exists into the proposed unified tribunal structure?

There was unanimous support for the proposal that the consideration of whether there was a prima facie case for the cancelling of tax advantages relating to s703 should be undertaken by the first tier of the reformed tribunal. The ICAEW commented: "Frequently the main issue is whether or not the transactions were carried out for bona fide commercial reasons or in the ordinary course of making or managing investments. These are essentially commercial rather than legal questions - that is, questions of fact - and therefore appropriate for the first tier."

Four respondents commented specifically on the need for panels making prima facie determinations to be composed of members of the appropriate experience and expertise. All four responses agree that panels composed of legally qualified chairs supported by members with relevant commercial, financial or business expertise would be appropriate. The legally qualified chair would be able to decide any technical legal issues. The members with commercial experience would bring experience that would enable the panel to "scrutinise the commercial reality within which the transactions in question are proposed to take place", as the Council on Tribunals put it.

Three responses commented on how the relevant knowledge and expertise could be brought to bear. The ICAEW suggested that panels should be selected by a person with expertise in s703 matters, possibly a senior, legally qualified Tribunal officer. The Special Commissioners suggested that the President of the Tax Tribunal should select panels, on the grounds that he or she would best know which members of the judiciary possessed the relevant expertise.

The Council on Tribunals also noted that some appellants had pressing business needs to get a quick determination in s703 cases. They wondered whether it would be feasible for the Tribunal to fast-track such cases for early hearing and determination.

2. What is the best way of dealing with substantive appeals against notices issued in relation to Section 703?

Five responses commented specifically on this issue. There was general agreement that the panels deciding substantive appeals would require the same kind of expertise and experience as those needed by the panels making determinations in prima facie cases.

Four of the five responses suggested that a panel deciding a substantive appeal would have to be composed of members other than those who made the prima facie determination in the case. The Special Commissioners noted: “There would be very many concerns if the same tribunal of chairmen or members who made a prima facie determination were then to hear the substantive appeal as an observer might think that they had made up their minds on the matter when deciding that there was a prima facie case and would be unlikely to come to another view”.

There was broad support for the proposal that substantive appeals should be decided at the first tier of the tribunal. The ICAEW cited the primarily factual nature of substantive appeals on s703 matters in this context. One response, from the Special Commissioners, suggested that substantive appeals should be decided by the second tier if the prima facie determination was to be heard by the first tier. Others felt this would not be an issue if a process were to be put in place to ensure different members considered any substantive appeal that considered the original application

3. What onward rights of appeal are needed to ensure adequate safeguards for appellants?

Of the five responses that offered comment on this question, four supported the proposal that an appeal from the first tier should be to the second tier of the tribunal. Only one response suggested a different appeals route. This was an appeal route from the first tier to the High Court.

There was unanimous support for the proposal that appeals from the second tier should be to the Court of Appeal. There was broad support for the proposals that appeals should be on a point of law, with permission.

There was general agreement that appeals from the first tier should be heard by members with experience and qualifications similar to those possessed by the High Court judiciary. This would ensure that an appropriate level of expertise would be brought to appeals, many of which would be complex in nature.

4. Greater use of proportionate dispute resolution

The Council on Tribunals noted that that s703 appellants often had to rely on legal and accounting experts to present what were highly technical aspects of tax law. This could make appeals prohibitively expensive. One way of making appeals more affordable might be to use proportionate dispute resolution. The Council suggested that there might be a place for mediation in settling s703 disputes, either before the appeals process itself or alongside it. Early neutral evaluation might also be appropriate.

Conclusion and Next Steps

1. The responses to the consultation have been broadly supportive of the proposals. The Department for Constitutional Affairs will take forward reform of the Section 703 Tribunal, as proposed, as part of the wider reform of the tax appeals system as a whole.
2. Fundamental reform of the tax appeals system will require primary legislation and will be achieved as part of the wider tribunals reform legislation that the Government has indicated will be brought forward in due course.
3. In the period leading up to the Bill, officials will continue to work with tax appeals stakeholders to develop detailed plans for the implementation of reform.
4. We will consider the comments made by the Council on Tribunals on proportionate dispute resolution within the context of work being undertaken in that area within the Tribunals Service.

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.gsi.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
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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 on page 3.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Annex A – List of Respondents

Institute of Chartered Accountants of England and Wales

Council on Tribunals

Special Commissioners

The Lord Chief Justice of Northern Ireland

Mr A J Ring (Section 703 Tribunal member)

Mr A Spier (Section 703 Tribunal member)

Mr G Jones (Section 703 Tribunal registrar)

Ernst and Young

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