

These notes refer to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) which received Royal Assent on 25 February 1999

SOCIAL SECURITY CONTRIBUTIONS (TRANSFER OF FUNCTIONS, ETC.) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I

Section 1 and Schedule 1- transfer of operational functions to the Inland Revenue

47. *Section 1* introduces Schedule 1 which transfers the operational functions currently carried out by the CA on behalf of the Secretary of State. These functions in relation to contributions, SSP, SMP and contracting-out matters will, from the day appointed for the operational transfer, be carried out by the Inland Revenue. Most of the amendments in Schedule 1 substitute "Inland Revenue" for "Secretary of State".
48. Functions conferred on the Secretary of State in provisions of subordinate legislation listed in Schedule 2 are also transferred to the Inland Revenue.

Schedule 1

Social Security Act 1986

49. *Paragraphs 1 and 2* amend legislation relating to the payment of incentives to contracted-out occupational pension schemes under the Social Security Act 1986 by substituting "Commissioners of the Inland Revenue" for "Secretary of State" as appropriate.

Income and Corporation Taxes Act 1988 (ICTA)

50. *Paragraph 3* amends section 638 ICTA which provides for restrictions on the approval of personal pension schemes. It substitutes "the Board" for "Secretary of State".
51. *Paragraph 4* amends section 649 ICTA, which provides for the tax treatment of DSS payments into personal pension schemes, to reflect the transfer from the Secretary of State to the Inland Revenue of the function of making such payments.

Social Security Contributions and Benefits Act 1992 (CBA)

52. *Paragraphs 5 to 9, 12, 13, 16 to 19* amend references in relevant sections of CBA to reflect the transfer of contributions, SSP and SMP functions from the Secretary of State to the Inland Revenue.

NB: Sections 1, 17 and 18 CBA and paragraphs 4, 6, 7 and 8 of Schedule 1 CBA are also amended by Schedule 3 to this Act.

53. *Paragraphs 10, 11, 14 and 15* stipulate that regulations made under powers in sections 161, 162, 170 and 171 CBA (special classes – e.g. servicemen and mariners) shall be made by the Secretary of State with concurrence of the Treasury.

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54. *Paragraph 17* states that the Secretary of State shall make any regulations under the power in Schedule 1, paragraph 6(5) CBA in concurrence with the Inland Revenue. This follows the precedent in the regulation-making powers for Class 4 contributions, also collected alongside income tax, for ensuring an operational input to DSS policy changes.
55. *Paragraph 20* inserts a new paragraph 1A into Schedule 11 CBA which requires regulations under paragraph 1 of that Schedule to be made with the concurrence of the Treasury.

Social Security Administration Act 1992 (SSAA 1992)

56. *Paragraph 21* amends section 116 (legal proceedings) so that an officer of the Revenue, not DSS, may conduct proceedings in relation to section 114 (fraudulent evasion of contributions).
57. *Paragraphs 22 to 24* transfer functions relating to recovery of unpaid contributions from the Secretary of State to the Inland Revenue.
58. *Paragraphs 25 to 27* state that the Secretary of State shall make any regulations under powers in sections 125, 130 and 132 relating to SSP and SMP in concurrence with the Inland Revenue.
59. Paragraphs *28 to 30* amend sections 162, 163 and 165 SSAA 1992 to reflect the transfer of functions relating to the NIF.
NB: Sections 162, 163 and 165 are also amended by Schedule 3 to this Act.
60. *Paragraph 31* allows applications for a National Insurance number to continue to be made through the contributions route or the benefits route as appropriate.
61. *Paragraph 32* inserts a definition of "Inland Revenue" into the SSAA 1992. It means "the Commissioners of Inland Revenue".

Pension Schemes Act 1993 (PSA)

62. *Paragraphs 33 to 63* make amendments to relevant sections of the PSA to reflect the transfer of operational functions for the contracting-out of SERPS by way of rebates of contributions from the Secretary of State to the Inland Revenue.

Statutory Sick Pay Act 1994

63. *Paragraph 64* adds the Inland Revenue to the provisions of section 5(3) of the Statutory Sick Pay Act 1994 to ensure that any expenses incurred as a consequence of the provisions of that Act may be paid out of money provided by Parliament.

Jobseekers Act 1995

64. *Paragraphs 65 and 66* make amendments to relevant sections of the Jobseekers Act 1995 to reflect the transfer of functions from the Secretary of State to the Inland Revenue.

NB: Section 27 of the Jobseekers Act is also amended by Schedule 3 to this Act.

Pensions Act 1995

65. *Paragraphs 67 and 68* make amendments to sections 107 and 108 of the Pensions Act 1995 to reflect the transfer of functions from the Secretary of State to the Inland Revenue.

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Schedule 2

66. **Schedule 2** lists provisions of secondary legislation which confer on the Secretary of State functions that are to be transferred to the Inland Revenue.

Section 2 and Schedule 3 - transfer of policy functions to the Treasury and Inland Revenue.

67. This section effects the transfer to Treasury Ministers and the Inland Revenue of policy functions of the Secretary of State in relation to contributions and the NIF. The transfers are to come into effect from an appointed day.
68. In tax legislation, regulation-making functions are generally reserved to the Treasury where they affect matters such as the existence or size of a tax liability. Regulation-making powers relating to administrative functions are generally transferred to the Board of Inland Revenue. This Act provides for the same general divide in relation to contributions. So the regulations relating to policy functions transferred would be made by the Treasury, although the Inland Revenue would be responsible both for advising Ministers on policy and for its operational implementation.

Schedule 3

Social Security Contributions and Benefits Act 1992 (CBA)

69. **Paragraph 1** transfers to the Treasury powers in section 1 to make regulations relating to the basic structure of the contributions regime, the rates of different categories of contributions and who is liable to pay them.
70. **Paragraphs 2 and 3** transfer powers concerning earners and earnings. These are to be exercised in concurrence with the Secretary of State since there are implications for the contributory benefits system.
71. **Paragraphs 4 to 15** transfer to the Treasury powers in sections 6 to 14 CBA to make regulations concerning liability and calculation of different categories of contributions.
72. **Paragraph 16** requires the Inland Revenue rather than the Secretary of State to pay Class 4 contributions and related interest into the Northern Ireland NIF.
73. **Paragraphs 17 and 18** remove DSS involvement in regulating incidental matters concerning Class 4 contributions, which is collected together with Schedule D tax.
74. **Paragraph 19** confirms that regulations concerning the contributions regime fall to the Treasury, whilst regulations concerning earnings factors, which are benefit-related, are retained by the Secretary of State.
75. **Paragraph 20** transfers a power to make regulations, inserted by section 54 SSA, allowing wrongly paid contributions to count for benefit purposes.
76. **Paragraph 21** amends the power to make regulations about what sums are to be treated as earnings so that it shall be exercised by the Treasury in concurrence with the Secretary of State. This takes account of potential implications for benefits.
77. **Paragraphs 22 to 28** transfer regulation-making powers in regard to special classes of contributors, such as servicemen. Because of potential effects on benefit entitlements they are all to be exercised by the Treasury in concurrence with the Secretary of State.
78. **Paragraphs 29 and 30** amend sections 175 and 176 (which cover regulation-making procedures) to include provisions where the Treasury or Inland Revenue have powers to make regulations.
79. **Paragraphs 31 to 35** transfer to the Inland Revenue powers in Schedule 1 paragraphs 1 to 6 CBA to make regulations about the detail of payment methods etc.

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80. *Paragraph 36* retains the apportionment between tax and contributions of any penalties collected under powers in Schedule 1 paragraph 7 CBA.
81. *Paragraphs 37 and 38* transfer to the Treasury the powers to set rates of penalties under paragraphs 7A and 7B of Schedule 1 CBA.
82. *Paragraph 39* transfers most of the list of regulation-making powers in Schedule 1, paragraph 8 to the Treasury. The power conferred by paragraph 8(1)(d) which concerns entitlement to benefits stays with the Secretary of State.
83. *Paragraphs 40 and 41* transfer regulation-making powers in paragraphs 9 and 11 of Schedule 1 to the Treasury.

Social Security Administration Act 1992 (SSAA)

84. *Paragraphs 42 and 43* provide that powers in sections 14 and 15 relating to SSP and SMP are to be exercised by the Secretary of State in concurrence with the Inland Revenue.
85. *Paragraphs 44 to 50* amend references in sections 141 to 147 SSAA 1992 which relate to periodic review of, and reports to Parliament on, the balance in the NIF. All such responsibilities are transferred from the Secretary of State to the Treasury.
86. *Paragraphs 51 and 52* transfer functions relating to the administration of the NIF from the Secretary of State to the Inland Revenue.
87. *Paragraph 53* provides that the NIF shall meet the administrative costs of statistical enquiries whether they are commissioned by the Inland Revenue or the Secretary of State.
88. *Paragraph 54's* amendments of section 165 should be read together with the amendments in paragraph 30 of Schedule 1 to the Act. Both the Inland Revenue and the Secretary of State have roles in making adjustments between the NIF and the Consolidated Fund which reflect their respective responsibilities post-transfer.
89. *Paragraph 55* amends section 166 because the Treasury will take over responsibility for receiving the report of the Government Actuary on the state of the NIF.
90. *Paragraph 56* amends section 177 to ensure that the Joint Authority, (consisting of the Secretary of State for Social Security and the Department of Health and Social Services for Northern Ireland), which co-ordinates the social security system across the United Kingdom, will continue to be able to make adjustments between the Great Britain and Northern Ireland NIFs once those Funds have been transferred to the control and management of the Inland Revenue.
91. *Paragraphs 57 and 58* amend sections 189 and 190 (about regulation-making procedures) to include regulations made by the Treasury or the Inland Revenue.
92. *Paragraph 59* amends Schedule 7 so that regulations making provision consequential on regulations under section 5 CBA (earnings limits) fall outside the remit of the Social Security Advisory Committee.

Social Security Act 1993

93. *Paragraph 60* amends section 2 to transfer to the Treasury functions relating to payments into the NIF.

Jobseekers Act 1995

94. *Paragraphs 61 to 64* transfer functions relating to the employers' National Insurance "contributions holiday" from the Secretary of State to the Treasury and Inland Revenue as appropriate.

Northern Ireland Act 1998

95. *Paragraph 65* amends section 88 of the Northern Ireland Act 1998 so that the new Joint Authority, which will co-ordinate the social security system across the UK and which will include also the Chancellor of the Exchequer, will be able to make adjustments between the Great Britain and Northern Ireland NIFs once those Funds are under the control and management of the Inland Revenue. (See also paragraph 90 above.)

Section 3: exercise by Inland Revenue of functions transferred to them

96. This section describes how the Inland Revenue will carry out its new functions.
97. Contributions are brought into the definition of “inland revenue” as set out in section 39 of the Inland Revenue Regulation Act 1890 (IRRA). From this it follows that section 13 of that Act places a duty on the Inland Revenue to collect contributions. Placing contributions under the care and management of the Inland Revenue allows the duty to “collect every part of inland revenue” to be tempered by considerations of efficiency and cost to the public purse.
98. Where the Inland Revenue is collecting contributions it will continue to give due weight to preserving an individual’s contribution record. There is no intention to relax the joint guidance in Departmental instruction manuals for Inland Revenue and CA staff. This sets out the limited circumstances in which discretion over calculation of contributions arrears can be exercised and requires staff to allocate contributions to an employee’s record wherever practicable.
99. Several sections of the IRRA set out in section 3(3) do not need to apply to contributions. In some cases, comparable legislation already exists in relation to contributions. In other cases, the section no longer applies to income tax and would not be suitable in relation to contributions.
100. Receipts from contributions do not form part of general government receipts. They are paid into the NIF under section 162 of SSAA 1992. Section 3(4) excepts contributions from the requirement on the Inland Revenue to pay all receipts into the Consolidated Fund.
101. The section adds the transferred functions to the matters covered by the confidentiality declarations signed by Inland Revenue staff and the tax appeal Commissioners. All those concerned with the administration of inland revenue sign a declaration that they will not disclose information received in the course of their duties, apart from certain specified purposes. One of those purposes is currently for the purpose of a prosecution relating to inland revenue. Section 3(5) permits disclosure for purposes of prosecutions relating to the Inland Revenue’s new areas of responsibility such as contributions.
102. At present the Inland Revenue is specifically given a power of care and management by paragraph 6(2) Schedule 2 CBA to allow it to remit interest charged on overdue Class 4 contributions. As section 3(1) gives Inland Revenue powers of care and management in relation to contributions as a whole this specific provision is no longer required. Section 3(6) repeals it.

Section 4 and Schedule 4: powers of recovery

103. *Section 4* and *Schedule 4* concern methods of enforcing the recovery of unpaid contributions. They enable summary proceedings to be taken in the magistrates’ courts in the same way and to the same extent as they can for tax debts. They also permit authorised officers of the Board who are not lawyers to appear in proceedings in the county courts (in England, Wales and Northern Ireland) and in the sheriff court in Scotland.

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104. These provisions do not apply to contributions which should at present be paid to the Inland Revenue along with tax. The recovery of those contributions is already aligned with the tax rules.

Details

105. [Section 4](#) provides that Schedule 4 has effect for the recovery of contributions (plus related interest or penalties) which fall into defined categories. As noted above, the contributions affected are those which are *not* already payable to the Collector of Taxes along with income tax. They include Class 1A contributions (on employees' car benefits) where an employer opts to pay them outside the arrangements for Class 1 contributions which run alongside the PAYE tax system and Class 2 contributions (the flat rate contributions paid by the self-employed).
106. [Paragraph 1](#) of Schedule 4 defines an 'authorised officer' as one authorised by the Board (of Inland Revenue) for the purposes of the provision in the Schedule where the expression occurs.
107. [Paragraph 2](#) sets out the rules for recovering contributions in a magistrates' court. These are modelled closely on section 65 of the TMA which sets out the equivalent provisions for tax.
108. [Paragraph 2\(1\)](#) provides that an amount of contributions, or interest or penalties on those contributions, is recoverable by summary proceedings as a civil debt so long as the amount does not exceed the 'prescribed sum'. That sum is defined in [Paragraph 2\(5\)](#) as the sum specified for the purposes of the equivalent tax provision (currently £2,000).
109. [Paragraph 2\(2\)](#) enables more than one amount of contributions to be recovered by way of the same legal document and that an error in respect of one such amount does not prejudice the claim in respect of the others.
110. [Paragraph 2\(3\)](#) provides for the time by which proceedings must be commenced. Generally, that is not later than the first anniversary of the date on which the contributions, interest or penalties in question fell due. But for Class 2 contributions that date is the last day of the tax year (ending on 5 April) following that in which the contributions and related interest or penalties fell due.
111. [Paragraph 2\(4\)](#) modifies paragraph 2(1) in its application to Northern Ireland.
112. [Paragraph 3](#) makes provision about the recovery of contributions, interest and penalties in proceedings in the county courts.
113. [Paragraph 3\(1\)](#) enables any sum due by way of contributions, interest or penalties to be recovered in the county courts in England, Wales and Northern Ireland by proceedings commenced in the name of an authorised officer.
114. [Paragraph 3\(2\)](#) provides expressly that those proceedings may be conducted in England and Wales by an authorised officer who is not a barrister or solicitor.
115. [Paragraph 3\(3\) and \(4\)](#) provides for the application of paragraph 3 in Northern Ireland.
116. [Paragraph 4](#) makes in relation to Scotland provision which is equivalent to that in paragraph 3.
117. [Paragraph 5](#) ensures that Class 1 and 1A contributions, or related interest or penalties, can be recovered without distinguishing the amounts due in respect of particular employees.

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Section 5 introduces Schedule 5 : enforcement

Schedule 5

118. Current powers of inspection available to DSS officers are set out in section 110 of SSAA 1992. Section 110 is amended to remove from its ambit issues which are being transferred from the Secretary of State to the Inland Revenue.
119. This Schedule sets out in the new section 110ZA the equivalent powers which will be available to Inland Revenue officers when visiting places of business to check on or enforce transferred matters. Initially these will be the former staff of the CA who will become officers of the Inland Revenue when functions are transferred. To align with existing tax sanctions, failure to produce information or documents when required to do so by such an officer will cease to be a criminal offence but instead will attract a civil penalty.
120. Annex B to these Notes shows sections 110 to 111 of SSAA 1992 as amended by the Act.
121. It will still be possible for the Secretary of State to make arrangements with the Inland Revenue for officers to undertake inspections for benefit purposes when they visit premises which they can inspect for their own purposes.
122. The Schedule also makes amendments to sections 111 to 121 SSAA 1992 to transfer operational responsibility for enforcement matters from the Secretary of State to the Inland Revenue.

Details

123. *Paragraph 1* ensures that, instead of criminal penalties, civil penalties for failure to supply information or documents and for fraudulently or negligently supplying incorrect information or documents, set out in section 98 TMA, apply where information or documents are requested under section 110ZA, as they apply for tax purposes.
124. Where there is a failure to provide the information the penalty is initially up to £300. A failure thereafter exposes a person to a further penalty of up to £60 a day so long as the failure continues. This mirrors the existing tax penalty. Where incorrect information is fraudulently or negligently provided the penalty is up to £3,000. The tax appeal Commissioners, an independent tribunal, have the ultimate say in setting the level of penalties having regard to the precise circumstances.
125. *Paragraph 2* amends section 110 of the SSAA 1992. The existing provision permits the Secretary of State for Social Security to enter into arrangements with other government departments whose officers are entitled to inspect premises for their own purposes. Under those arrangements, those officers can be allowed to use the powers in section 110 for the purposes of that section. In other words, they can deputise for the Secretary of State's own staff in the use of those powers.
126. The replacement makes it clear that the Secretary of State can make arrangements of this nature with the Inland Revenue. This will ensure that the current role of CA inspectors in carrying out visits to employers' premises to check on compliance with legislation which other DSS Agencies administer may continue after transfer of functions. Visits of this kind may be made, for example, to check the details of earnings given by a person claiming an income-related benefit.
127. *Paragraphs 2(3) and (4)* ensure that the powers in section 110 cannot be used by DSS officials in relation to functions which will be transferred from the Secretary of State to the Inland Revenue by the Act.

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128. *Paragraph 3* is at the core of the changes. It introduces a new section 110ZA into the SSAA 1992 which sets out the powers of officers of the Inland Revenue in relation to the functions taken over. The section is modelled closely on the existing section 110. However, no provision is made in the new section for the exercise by the Inland Revenue of those powers in relation to the functions which stay with the DSS. That is left to arrangements under the revised section 110(5).
129. Section 110ZA(1) provides that the Inland Revenue may authorise any of its officers to exercise the powers conferred by the section for the purpose of the enactments set out in sub-section (7). They are the CBA (insofar as it relates to contributions, SSP and SMP), the SSAA 1992 and Part III of the PSA (which regulates employers' private occupational pension schemes).
130. This parallels the existing power of the Secretary of State for Social Security in relation to his own officials. Initially the officers authorised by the Inland Revenue will largely be the former members of the CA who currently use the powers conferred by section 110 SSAA 1992.
131. Section 110ZA(2) sets out the powers of the officers so authorised. The subsection provides that the powers are to be exercised for the purpose of the legislation set out above. There are three powers mirroring those in the existing section 110.
132. First, officers have a right to enter at any reasonable time premises liable to inspection under the new section. This does not bestow any power to enter by force. The premises are defined in section 110ZA(3) as those where staff are employed, where a trade or business is carried on, where business records are kept or where pension schemes are administered. But private residences can only be inspected where a trade or business is carried on from them and is not also carried on from other (commercial) premises.
133. This description of premises liable to inspection departs from that in section 110(3) of the SSAA 1992 in favour of the one in section 110B(5) (as inserted by section 12 of the Social Security Administration Fraud Act 1997 (SSA(F)A 1997)) in connection with inspection to check entitlement to housing benefit. The new formulation further constrains the circumstances in which private residences can be inspected.
134. Secondly, officers are entitled to make whatever examination and enquiry is necessary to ascertain whether the legislation referred to above is being complied with in those premises.
135. Thirdly, officers may require answers to questions relating to the application of the legislation from any person on the premises who is believed to be liable to pay contributions or a contributions equivalent premium.
136. Section 110ZA(4) requires that officers authorised by the Inland Revenue under subsection (1) must carry a certificate of their authorisation and must produce it when asked.
137. Section 110ZA(5) requires the persons defined in subsection (6) to provide an authorised officer with information and to produce documents which he or she may reasonably require for the purpose of checking whether contributions, SSP, SMP or a contributions equivalent premium have been correctly paid.
138. Under the equivalent provision in section 110(7) a person need not supply information or documents if to do so would incriminate himself or herself, or a spouse. There is no similar provision in section 110ZA because under the new section there is no criminal sanction for failing to do so.
139. The persons who can be required to supply information or documents are defined in section 110ZA(6) as employers, persons carrying on an employment agency, a trustee or manager of a personal or occupational pensions scheme, their employees or their agents.

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140. Section 110ZA(7) sets out the legislation to which the new section applies.
141. Section 110ZA(8) provides that a ‘contributions equivalent premium’ includes its predecessor a ‘state scheme premium’ payable before 6 April 1997.
142. *Paragraph 4* ensures that the existing criminal sanction in section 111 for failing to cooperate in one way or another with officers exercising their powers under section 110 does not apply where the powers are exercised by Inland Revenue officers. That is the case whether the powers are exercised by Inland Revenue officers under section 110ZA or under section 110(5) by virtue of arrangements between the Secretary of State for Social Security and the Inland Revenue.
143. *Paragraph 4* also ensures that no distinction is drawn in the application of the civil penalties rules (attracted by virtue of the amendment of section 98 TMA made by paragraph 1) depending on whether officers are acting under section 110ZA or section 110(5).
144. *Paragraphs 5 and 7 to 11* change references to the Secretary of State to the Inland Revenue in relevant sections of SSAA 1992.
145. *Paragraph 12* inserts into section 162 new subsections (4ZA) and (4ZB) which ensure that any penalties imposed under section 110ZA or section 111(4) SSAA 1992 will be paid into the NIF even though other penalties charged under section 98 TMA are treated as tax due.

Section 6 and Schedule 6: supply of information

146. The close relationship between contributions and other social security functions of the DSS means that, following the transfer of the CA to the Inland Revenue, it will be essential for each department to have access to certain information held by the other. Section 6 introduces Schedule 6 which provides for existing flows of information to take place across revised inter-departmental boundaries, for specified purposes. Annex C to these Notes shows sections 121E to 122E of SSAA 1992 as amended by this Schedule.

Schedule 6

147. The Inland Revenue has a well established duty, judicially approved, of taxpayer confidentiality. Information identifying taxpayers is only released to other government departments in accordance with explicit statutory gateways. Schedule 6 inserts new gateways and amends existing ones so that the Inland Revenue and DSS can exchange the information necessary to carry out their functions.
148. For example, the Benefits Agency (BA) needs data held by the CA on contribution records, in order to pay benefits accurately. At present, the CA and the BA can pool information, since they fall under the same Secretary of State. The BA will still need access to contribution records once the CA transfers to the Inland Revenue. Otherwise it cannot do its job. So Schedule 6 ensures this access. It does not provide for new, additional exchanges of information.
149. *Schedule 6* does *not* provide for general pooling of data across the new Inland Revenue/DSS boundary. Nor does it provide new scope for tax data to pass to DSS and its agencies, or beyond.
150. Taxpayer confidentiality is buttressed by a criminal sanction for unauthorised disclosure of information by Inland Revenue staff (in section 182 Finance Act 1989). Schedule 6 extends the sanction to disclosures relating to the new Inland Revenue tasks.

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Detail

151. The SSAA 1992 provisions on exchange of information were substantially extended by the SSA(F)A 1997. So Annex C to these Notes shows how the "exchange of information" provisions in SSAA 1992 will read after amendment by this Act.
152. *Paragraph 1* inserts a new section 121E into SSAA 1992. (Sections 121A to D were introduced by sections 63 (recovery of contributions) and 64 (liability of directors for company's contributions) of the SSA.) The new section 121E will give DSS (and DHSS (NI)) a mandatory right of access to contributions, SSP and SMP information - but not tax information. Disclosed information may be used only for social security, child support and war pensions purposes (which includes checking the security of National Insurance numbers as well as validating benefit claims).
153. *Paragraph 1* also inserts a new section 121F. This provides for the reverse mandatory exchange, from the Secretary of State or his contractors to the Inland Revenue and their contractors. The disclosable DSS data is about social security, child support and war pensions. It is disclosable only for contributions, SSP and SMP functions.
154. *Paragraph 2* amends the revised version of section 122 SSAA 1992, inserted by section 1 of SSA(F)A 1997. This is about discretionary release by the Inland Revenue or Customs and Excise to DSS (or DHSS (NI)) of tax data for fraud prevention, and for checking the accuracy of benefits and other social security records. Subsection (1)(a) of section 122 makes clear that section 122 applies only to tax information: since disclosure of contributions, SSP and SMP information will now be covered by section 121E.
155. *Paragraph 3* inserts a new section 122AA. This is drafted in language echoing that of section 122 as originally enacted (power to allow the Inland Revenue to disclose tax information to DSS.) Section 122AA will allow the Inland Revenue to disclose contributions, SSP and SMP information to four specified government bodies – the Health and Safety Executive, the Government Actuary's Department, the Office for National Statistics and the Occupational Pensions Regulatory Authority - for use for the functions of those bodies. This maintains, for example, current information flows
 - about industrial mortality
 - for actuarial calculations about the NIF
 - for statistical analysis about contributors
 - to help with regulation of pensions.
156. *Paragraph 4* repeals section 122A SSAA 1992. Section 122A was inserted by the SSA(F)A 1997. It provides for *discretionary* disclosure by Inland Revenue to DSS and DHSS(NI) and is therefore overtaken by the mandatory disclosure provided under the new section 121E inserted by paragraph 1 of this Schedule.
157. *Paragraph 5* amends section 122B SSAA 1992 by removing contributions from its ambit.
158. *Paragraph 6* tidies up the definition in Schedule 4 SSAA 1992 of "persons employed in social security administration". Section 123 and Schedule 4 SSAA 1992 provide a criminal offence for unauthorised disclosure of social security information. Protection under section 123 is no longer needed, since Inland Revenue staff are subject to separate criminal sanction for disclosure of both tax and social security information (see the description below of paragraph 8 and section 182 of the Finance Act 1989).
159. *Paragraph 7* maintains current information flows, across the new departmental boundary, for pensions purposes.

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160. *Paragraph 8* allows the Inland Revenue to disclose pensions information to the same recipients as DSS can now. The new section 158A(1A) of the PSA echoes the language of section 158A(1).
161. Section 158A was inserted by Schedule 6 paragraph 9 Pensions Act 1995. It provides a table of persons to whom pensions information may be disclosed, for listed functions. The persons to whom DSS may disclose pensions information are
- The Treasury
 - The Bank of England
 - The Pensions Regulatory Authority
 - The Pensions Compensation Board
 - The Friendly Societies Commission
 - The Building Societies Commission
 - An Inspector appointed by the Secretary of State for functions under sections 94 or 177 of the Financial Services Act 1986 (FSA)
 - A person authorised to exercise powers under section 106 of the FSA
 - A designated agency or transferee body or a competent authority (within the meaning of the FSA)
 - A recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house (within the meaning of the FSA).
162. This list may be amended by the Secretary of State by order. And an order may put conditions on disclosures to people on this list. By virtue of the new section 158A(1A), the Inland Revenue will be able to make the same disclosures. Future changes to the list in subsection (1) of section 158A, or to the conditions of disclosure, will read through to disclosures by the Inland Revenue.
163. *Paragraph 9* extends the criminal sanction in section 182 Finance Act 1989 which applies to Inland Revenue staff and others involved in tax administration for unauthorised disclosure of tax information. It will also apply to disclosure of information about "social security functions" held by such staff in the carrying out of their duties.
164. The tax sanction applies to unauthorised disclosure of tax information about identifiable people. This is extended to disclosure of contributions, SSP and SMP information in respect of identifiable people. "Social security functions" are defined, but only for the purpose of this section, to cover contributions, SSP, SMP and pensions functions, not just of the Inland Revenue and their contractors but of the tax appeal Commissioners.
165. *Paragraph 10* removes the powers in section 110 Finance Act 1997 for DSS to supply the Inland Revenue with information about social security contributions because the new section 121F inserted by paragraph 1 of this Schedule supplants the section 110 references.

Section 7: Data Pooling

166. This section provides for the Inland Revenue to use data held for one of its functions for the purpose of other functions. For example information held in connection with contributions may be used for the purposes of tax functions. The section covers the pooling of information held for the purposes of tax and for the purposes of functions relating to contributions, SSP and SMP which are to be transferred to the Inland Revenue from the Secretary of State.

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167. This provision mirrors that in section 3 of SSA which allows the Secretary of State to pool data held for the purposes of functions relating to social security, child support and war pensions. It does not provide for pooling of Inland Revenue and DSS data across the new departmental boundary.

Part II: Decisions and Appeals

General

168. Part II of the Act (sections 8 to 19 and Schedule 7) provides for Inland Revenue staff to take decisions on matters currently administered by the CA. It also provides that appeals against those decisions should, in the main, go to the tribunals that hear tax appeals. Often similar or identical issues will arise for both tax and contributions. An example would be whether a person is employed or self-employed.
169. Currently, there is no right of appeal on a point of fact to an independent tribunal on contributions issues. Instead, there is a procedure for the Secretary of State to be asked formally to determine one of a range of "questions". That determination is made by DSS civil servants, sometimes following an inquiry assisted by Counsel or by other expert advice. There is a right of appeal, but only to the High Court (in Scotland, the Court of Session) and then only on a point of law.
170. The SSA provides that a range of decisions by the Secretary of State should be subject to appeal, on both points of fact and law, to a new unified appeals tribunal. That tribunal will subsume the existing benefit appeals tribunal. These provisions will be brought into effect in the course of 1999/2000.
171. A number of representative bodies, and other interested parties (for example, the Tax Law Review Committee) have suggested that, once the Inland Revenue is responsible for contributions matters, appeals should be heard by the same tribunals as for tax appeals. This would reduce the chances of inconsistent tribunal decisions on the same or similar law, and could provide appellants with better service than having to take much the same issue to two different appeal bodies. During the passage of the SSA, the Government undertook to reconsider use of the unified appeals tribunal for contributions issues.
172. The broad aim of Part II is to merge aspects of the SSA decision-making process with the TMA appeals procedures. Historically, the appealable decision for tax has been the issue of an assessment or the determination of a claim for relief. Since the introduction of self-assessment, tax appeals will increasingly be against an Inland Revenue amendment to a self-assessment. In all cases, the tax decision against which an appeal is made will potentially cover a range of matters of fact and law, rather than the more specific decisions envisaged in Part II of Schedule 3 to the SSA.
173. This merger with existing tax rules is complicated by the expected staged entry into force of the Part I of the SSA. There are added complications in merging the two sets of procedures in that income tax is an annual tax. So decisions will normally relate to a whole tax year. By contrast, contributions operate on relatively short - even weekly - pay periods. But the consequences of implicit or explicit decisions on contributions liability, and hence someone's contributions record, may only come to light if benefit entitlement is queried, perhaps years later.
174. In addition, for contributions it is more likely that someone other than the Inland Revenue and the appellant may have an interest in the outcome of an appeal. An example would be an appeal about employment status, where an individual's employer or engager will face different contributions consequences according to whether the individual is found to be employed or self-employed.
175. For those reasons the processes for making decisions and handling appeals cannot be exactly the same for contributions as for tax. The provision for decision-making and

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appeal procedures in Part II needs to cover not just contributions but other operational areas transferring from DSS, that is SSP, SMP and pensions issues.

176. Taking all these factors together, there will be a wide range of permutations of decision-making and appeals issues. Hence Part II takes a number of regulation-making powers to address details, rather than attempting to specify them in primary legislation.

Section 8: decisions

177. **Section 8** provides for the Inland Revenue to take decisions on specified contributions, SSP and SMP matters. The list of decisions for the Inland Revenue set out in paragraphs (a) to (l) of subsection (1) comprises much of the Secretary of State's existing jurisdiction under section 17(1) of SSAA 1992 together with some further matters. The terminology is taken from that section and from the SSA.
178. **Section 8(1)(m)** is a general provision along the lines of paragraph 29 Schedule 3 Part II SSA ("power to prescribe other decisions"). It allows the Inland Revenue to set out in regulations other contributions decisions. For example, this will allow the Inland Revenue officers to take responsibility for decisions that might follow from future changes to the legislation on contributions.

Section 9: regulations

179. **Section 9** is modelled on section 11 SSA. It provides for regulations to be made about decisions, so that the permutations mentioned above may be taken into account. It is intended that these regulations will cover matters such as what constitutes a decision, how the decision is to be made and notified to those interested, the persons affected by a decision and the period covered by a decision. It confirms that Inland Revenue staff can seek specialist advice before making a decision. An example would be where medical evidence was relevant to a claim for SSP.

Section 10: variation of decisions

180. **Section 10** gives a regulation-making power for Inland Revenue decisions made under this Act to be subsequently varied or, (where, for instance, circumstances change), enabling a new decision to be made on the same question. It reflects the powers in section 9 SSA on revision of DSS decisions in prescribed circumstances, and the powers in section 10 of that Act to supersede earlier DSS decisions. It is expected that the regulations will address a range of circumstances, including those where the initial decision was:
- based on incomplete or incorrect facts
 - wrong in law
 - correct, but circumstances of fact or law have changed.
181. The power to define when the variation or replacement decision takes effect is needed because decisions may be in respect of a past occasion or period; or may affect the future.
182. Powers conferred in subsection (1)(a) and (b) provide for the Inland Revenue to vary or supersede their own decisions. Where the tax appeal Commissioners have determined an appeal against a decision then subsection (1)(c) provides for an Inland Revenue officer to make a superseding decision to replace it only if there has been a material change of circumstances.

Section 11: appeals

183. **Section 11** provides for a right of appeal to an independent tribunal, the tax appeal Commissioners, against any decision taken under section 8, or a decision superseding

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an earlier decision. (Section 19 defines "tax appeal Commissioners" as the General and Special Commissioners for income tax.) The section recognises that for contributions, SSP or SMP issues, unlike (in most cases) for tax, more than one party may have an interest in the outcome of an appeal. For example, both the employer and employee may have an interest in the outcome of an appeal on SSP and SMP. So section 11(2)(a) gives appeal rights to both about a person's entitlement to benefit. For other issues, because the permutations of circumstances will be wide, section 11(2)(b) provides a regulation-making power for the Inland Revenue to give interested persons a right to appeal.

Section 12: exercise of appeal right

184. **Section 12** adapts material in section 31 TMA on appeals. The intention is to align the procedures as far as practicable with those for tax appeals. So tax practitioners, and the tax appeal Commissioners themselves, should be able to follow familiar processes in handling these new areas of work. Parties to appeals against Inland Revenue decisions - whether on tax, contributions, SSP or SMP - also would face only a single set of tribunal deadlines and procedures.
185. **Section 12(1)** adopts the 30 day appeal deadline in section 31(1) TMA. Section 12(2) mirrors section 31(2)'s requirement that the appeal is to be made to the officer who made the decision. Section 12(3) follows section 31(5) in giving the appellant the opportunity to raise additional grounds before the tribunal to those specified in his appeal. Section 12(4) follows section 31(4) TMA in putting appeals to the General Commissioners (a local lay tribunal) unless the appellant elects to go the Special Commissioners (a national tribunal whose members are legally qualified). Section 12(5) brings in provisions in the TMA governing the circumstances in which an appellant's election to go to the Special Commissioners may be withdrawn by agreement with the Inland Revenue, or set aside by the General Commissioners.

Section 13: regulations with respect to appeals

186. **Section 13** allows the adoption for contributions of most of the material about appeals in Part V TMA which covers appeals procedures, settling appeals by agreement and taking appeals beyond the initial tribunal. Because there are material differences between tax and contributions, SSP or SMP, the regulation-making power allows for appropriate modification of the rules for appeals on tax matters. In that respect, it reflects the existing arrangements for appeals to the tax appeal Commissioners for Class 4 contributions, under paragraph 8 Schedule 2 CBA.
187. The tax appeal Commissioners are funded by the Lord Chancellor's Department in England and Wales, and the Lord Advocate's Department in Scotland. Hence regulations under section 13 are to be made with the concurrence of those Ministers. Detailed regulations on the procedures to be adopted by the General and Special Commissioners are made by the Lord Chancellor (with the Lord Advocate's consent.) Section 13 provides that current procedural regulations shall be treated as including procedures for appeals to the Commissioners against decisions transferred by this Act, and that future regulations also should cover appeals against transferred decisions.

Section 14: matters arising as respects decisions

188. **Section 14** is derived from section 18 SSA. Subsection (1) confers equivalent regulation-making powers to cover matters arising before a decision is made, or an appeal is determined, or about the consequences of varying or superseding a previous decision, including a variation on appeal. Subsection (2) enables regulations to provide for the payment of contributions pending the determination of an appeal. Since this power could affect benefit rights, it is to be exercised by the Inland Revenue with the concurrence of the Secretary of State in relation to SSP and SMP matters (subsection (3)).

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Section 15: transitional provisions

189. The SSA, which includes the new material on social security decision-making and appeals to the new unified appeals tribunal, is not yet in force. It will not come fully into force until after the day appointed for the operational transfer. A succession of appointed days in respect of different matters is expected during the course of 1999/2000. The main provisions of this Act are drafted on the basis that the changes made by the SSA are in place, but for a transitional period that is unlikely to be the case. Section 15 enables regulations to be made modifying existing adjudication provisions in the SSAA 1992 and the pension schemes legislation so as to enable the decision-making regime introduced by this Act to operate alongside the present arrangements for social security adjudication relating to contributions, SSP, SMP and pensions schemes during that transitional period.

Section 16: decisions under the Pension Schemes Act 1993

190. **Section 16(1)** transfers to the Inland Revenue the function of making decisions on contracting-out matters, which arise mainly under Part III of PSA. The amendments to the PSA made under subsection (2) retain the decision-making and appeal procedures to be introduced by the SSA, including an appeal route on pensions issues to the unified appeals tribunal. This is because the work on contracted-out pensions is separate from other current CA work, and is specialised and often highly technical and quite distinct from tax and contributions work. The Act provides that the few formal appeals expected should stay with the unified appeal tribunal, with its scope to include pensions experts as tribunal members, rather than transfer to the tax appeal Commissioners.

Section 17: responsibilities at home and credits

191. Social security legislation provides for people to enhance their contribution records without paying contributions. Examples are credits when someone is undergoing training or on jury service rather than working. Home responsibilities protection is given where someone is a carer at home. Although these provisions are primarily about benefit entitlement, many of the operational tasks are currently undertaken by the CA. Rather than relocate the work, section 17 provides for it to be done by the same people, under Inland Revenue management but acting as agents for the Secretary of State.

Section 18: amendments relating to decisions and appeals

192. **Section 18** introduces Schedule 7. This provides for the detailed amendment of existing legislation relating to decision-making and appeals (the TMA, CBA, SSAA 1992, PSA, the Employment Rights Act 1996 and the SSA). In particular, it provides for requests for Inland Revenue decisions on contributions which are necessary to make benefit decisions or determining benefit appeals.

Schedule 7: Decision making and appeals

Taxes Management Act 1970 (TMA)

193. **Paragraphs 1 to 3** amend the TMA to give the tax appeal Commissioners jurisdiction over appeals against decisions under Part II of this Act.

Social Security Contributions and Benefits Act 1992 (CBA)

194. **Paragraphs 4 to 8** amend CBA to include this Act's appeal procedures in the legislation which may be modified for special cases - for example, the contributions treatment of servicemen, mariners and those living abroad.
195. **Paragraphs 9 and 10** amend CBA to provide that interest and penalties shall not run where a decision affecting the interest or penalty liability has yet to be made.

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196. *Paragraph 11* amends paragraph 8 of Schedule 2 so that Part V TMA can apply in relation to decisions about certain categories of Class 4 contributions.

Social Security Administration Act 1992 (SSAA 1992)

197. *Paragraphs 12 and 14* make consequential amendments to sections 117 and 166 SSAA 1992 to reflect the new arrangements for appeals.
198. *Paragraphs 13, 15 and 16* amend the SSAA 1992 to do three things. First, paragraph 13 introduces a new section 117A. This parallels the present section 117. Section 117 provides that decisions by DSS shall be treated as final for court proceedings, for example for enforcement of contributions debts. The new section 117A similarly provides for finality in such court proceedings of decisions taken by the Inland Revenue on transferred matters. Where a decision relevant to those proceedings has yet to be taken, the matter will be referred to an officer of the Inland Revenue for a decision. Where an appeal is outstanding against a decision, the court proceedings will be stayed until the appeal has been resolved. Second, paragraph 15 provides that this Act's appeals legislation may be modified by bilateral contributions and benefits treaties with other countries. Third, paragraph 16 provides for payment of travelling expenses to people required to attend an interview, including one in connection with an appeal. This provision parallels DSS's ability to pay expenses under section 180 SSAA 1992.

Pensions Schemes Act 1993 (PSA)

199. *Paragraphs 18 and 19* amend the PSA to provide for decisions to be made by the Inland Revenue rather than by DSS; and provide for a pensions equivalent to the new section 117A SSAA 1992 material on court proceedings.
200. Specifically, paragraph 18(2) removes section 167(3) of the PSA which confers powers to make regulations in connection with the decision making process. This will be unnecessary once Section 170 of the PSA as amended by section 16(2) of the Act is in force.
201. *Paragraph 20* inserts new section 171A into the Pension Schemes Act to require the Inland Revenue to produce a report setting out the standards achieved by their officers in the making of decisions on contracted-out matters against which a right of appeal lies to a DSS unified appeal tribunal. Subsection (2) allows the report to be included in an annual report prepared by the Inland Revenue or annexed to the equivalent report produced by the Secretary of State under section 81 PSA. Subsection (3) requires that the report is laid before Parliament.

Employment Rights Act 1996

202. *Paragraph 21* amends section 215 of the Employment Rights Act 1996 to provide for appeals about overseas employment issues to go down the tax appeal route.

Social Security Act 1998

203. *Paragraph 22* makes it clear that decisions on transferred matters can only go down the tax appeal route (apart from pensions matters).
204. *Paragraph 23* repeals a reference to DSS variations of decisions on directors' liability, since those decisions pass to the Inland Revenue.
205. *Paragraph 24* provides a power for DSS to refer contributions issues to the Inland Revenue for resolution. This may involve an initial opinion or a formal appealable decision. And DSS may continue to process other issues while the contributions issue is being resolved.
206. *Paragraph 25* revises section 12(2) SSA to reflect the transfer of SSP and SMP appeals to the tax appeal Commissioners.

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207. *Paragraph 28* repeals references to procedural issues connected to matters transferred to the tax appeal Commissioners by this Act.
208. *Paragraphs 30 and 31* remove the current ability of DSS or an appeal tribunal to require SSP or SMP claimants to undergo a medical examination.
209. *Paragraph 33* provides powers for benefit appeal tribunals to refer to the Inland Revenue contributions issues relevant to determining a benefit appeal. Where this happens, DSS may be required to revise their earlier decision.
210. *Paragraph 34* makes clear that the rules governing the correction of benefit decisions made in error do not include decisions in respect of transferred functions.
211. *Paragraph 35* clarifies the references to "Commissioners", drawing a distinction between the tax appeal Commissioners and Social Security Commissioners.

Section 19: interpretation in Part II

212. This defines who are the "tax appeal Commissioners".

Part III: Miscellaneous and Supplemental

Section 20: payments under section 42A(3) Pension Schemes Act 1993

213. The policy intention is that National Insurance rebates should be funded from the NIF. However the legislation currently provides for age-related rebates to contracted-out money purchase schemes to be paid out of money provided by Parliament. This section corrects section 177 of the PSA and section 172 of the Pension Schemes (Northern Ireland) Act 1993 (the sections which cover the general financing arrangements for those Acts) to allow money purchase rebates to be funded from the NIF.
214. Subsection (1) provides for National Insurance rebates for contracted-out occupational money purchase pension schemes made by Inland Revenue to be funded from the NIF, and for any recoveries to be paid into that Fund.
215. Subsection (2) makes corresponding provision in the Northern Ireland legislation.
216. Subsection (3) provides for a payment to be made out of the NIF into the Consolidated Fund in respect of the sums that the Secretary of State estimates he has paid (out of the Consolidated Fund) in respect of such rebates in the current tax year.
217. Subsection (4) makes a corresponding provision in the Northern Ireland legislation.
218. Subsection (5) provides that until the date of operational transfer, any rebates made will be made by the Secretary of State; and up until that date the reference to the Inland Revenue in subsection (1) shall have effect as if it was a reference to Secretary of State.

Section 21: property, rights and liabilities

219. This section deals with the transfer of property, rights and liabilities of the Secretary of State for Social Security to the Inland Revenue and the Treasury under the provisions of this Act.
220. *Subsections (1) and (2)* deal with the transfer of property, rights and liabilities to the Inland Revenue or the Treasury when a transfer provision is commenced by Order.
221. *Subsection (3)* replicates a standard provision in Orders in Council under the MoCA. It clarifies property ownership following transfers of functions so that if the Inland Revenue or Treasury wish to dispose of property transferred to them under this Act, a certificate issued to say this shall be conclusive evidence that this property has been transferred. This provision is unlikely to be used since the vast majority of DSS property

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is now held under contract with private suppliers. However, these provisions provide a back-up in any case of disputed ownership.

Section 22: contracts

222. The CA currently receives goods and services under a wide range of contracts. Under section 21 contracts relating wholly to functions transferred become contracts with the Inland Revenue. However, the CA also receives goods and services under contracts which also provide for the supply of goods or services to other parts of the DSS, such as the BA. So in these cases the contract relates partly to functions transferred and partly to functions to remain in the DSS. Examples would be some of the contracts providing computer hardware and software (run by the Information Technology Services Agency on behalf of the DSS), office services to buildings where there is joint ownership by BA and CA staff, and so on. Section 22 provides for continuity in the supply of goods or services under these contracts.
223. Subsection (1) defines this group of contracts. Subsection (1)(a) makes it clear that section 22 applies to contracts relating partly to functions transferred under this Act and partly to functions retained with the DSS. Subsection (1)(b) adds to this contracts which may themselves relate solely to functions transferred to the Inland Revenue but which are ordered under a framework agreement to which subsection (1)(a) applies. So section 22 would apply to a framework agreement for the supply of desktop computers to the DSS generally, and in the same way to an individual order by the CA for a computer under that framework. Subsection (2) then disapplies, for contracts falling within section 22, the general provisions for the transfer of property, rights and liabilities in section 21.
224. Subsections (3) to (5) then provide two patterns for treatment of these contracts. The first, in subsection (3), provides that the contract, in so far as it relates to transferred functions, should be treated as providing goods and services also to the Inland Revenue. This means that the CA, as part of the Inland Revenue, will continue to be able to receive goods and services under current contracts, although the contract will continue to be with and managed by the DSS. The Inland Revenue will not be able to use this provision to receive any goods and services under the contract for purposes other than functions transferred to it by this Act.
225. Subsections (4) and (5) then provide for an alternative option. In some cases of contracts within this group it may be more appropriate for the contract to be transferred to the Inland Revenue, in particular where the CA receives the majority of the benefits under the contract. Subsection (4) provides an order-making power by which specific contracts, or groups of contracts, can be treated as exceptions to the rule in subsection (3). The exception, set out in subsection (5) is that the contract is transferred to the Inland Revenue but that DSS can continue to receive goods and services under the contract.

Section 23: further transfers

226. Normally transfers of functions between Government Departments are effected by an Order in Council made under powers in the MoCA, rather than by primary legislation. Experience of these operational and policy transfers may suggest that further adjustments of the DSS/ Inland Revenue boundary are sensible. Section 23 provides a mechanism for making these adjustments in a similar manner to Orders made under the MoCA, rather than by returning to Parliament with another Bill.
227. Subsection (1) creates the power to transfer functions by Order in Council. The transfer can be from the Secretary of State to the Inland Revenue or vice versa. No power is provided to transfer responsibilities between the Secretary of State and the Treasury since this can already be achieved by an Order under MoCA. Subsection (2) sets the limits on the scope of such Orders to ensure that section 23 does not provide a general power to transfer functions between the Inland Revenue, the Treasury and the

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DSS. These Orders can transfer functions which relate to contributions and the NIF (other than those relating to collection function under section 1(1) CBA, or control and management of the NIF as set out in section 161 SSAA 1992), SSP, SMP and contracting-out. Under subsection (1)(d)(i) these Orders can transfer decision-making responsibilities relating to the transferred functions. Under subsection (1)(d)(ii) these Orders can transfer the mechanism for deciding on these issues between the provisions of Part II of this Act - which allows for decisions to be made by the tax appeal Commissioners - and Chapter II of Part I of the SSA - which allows for decisions by the unified appeal tribunals.

- 228. Subsection (3) sets out which decisions may be affected by an Order.
- 229. Subsection (4) allows for consequential or transitional measures in an Order, including on contractual and other legal issues.
- 230. Subsection (5) provides for a “certificate of transferred property” procedure as in section 21(3).
- 231. Subsection (6) interprets how the power applies in respect of the equivalent Northern Ireland legislation.

Section 24: Northern Ireland

- 232. This section is concerned with provision for corresponding and related functions in Northern Ireland. Contributions in Northern Ireland are collected by the Contributions Unit of the Northern Ireland Social Security Agency of DHSS (NI), although in practice much of the work is done on behalf of the Unit by the CA in Great Britain. It is intended that the Contributions Unit should be transferred to the Inland Revenue at the same time as the CA is transferred. Similarly, it is intended that contributions policy in respect of Northern Ireland should transfer at the same time as the equivalent policy in respect of Great Britain.
- 233. Paragraph 10 of Schedule 2 to the Northern Ireland Act 1998 excepts contributions and related matters, such as National Insurance rebates to pension schemes, from the powers of the Northern Ireland Assembly. Section 24 allows for the direct transfer to the Inland Revenue or, as the case may be, the Treasury, of operational and policy responsibilities which correspond to those transferred by this Act (subsection (1)(a) and (c)). It also allows for the temporary transfer of contributions policy responsibilities in respect of Northern Ireland to the Secretary of State for Social Security (subsection (1)(b)).
- 234. The (one or more) Orders in Council are likely largely to replicate relevant provisions of this Act, but for Northern Ireland legislation. Section 24(4) allows an Order to contain consequential, transitional or other modifications of enactments. It also permits the transfer of civil servants from the Northern Ireland Civil Service to the Home Civil Service.
- 235. [Section 24 \(4\)](#) and [\(5\)](#) again provide for a certification procedure in relation to the transfer of property.
- 236. [Section 24 \(7\)](#) allows for any renaming and restructuring of the relevant Northern Ireland Departments that may occur, prior to the Northern Ireland Assembly starting work, between enactment of this Act and the making of the Order/s in Council under this section.

Section 25: orders and regulations

- 237. This section provides that orders and regulations are to be made by statutory instrument subject to the negative resolution procedure. Subsections (3) to (6) follow other social security legislation (e.g. section 189 (4) and (5) SSAA 1992; section 175 (3) and (4) CBA) in making clear that regulations may make different provision within the classes to which the specific regulation-making power relates, may make incidental or

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transitional provisions, and may allow for a person to exercise a discretion when dealing with any matter.

Section 26: savings, transitional provisions, consequential amendments and repeals

238. The section introduces Schedules 8, 9 and 10.

Schedule 8: Savings and transitional provisions

239. *Paragraph 1* provides that

- any actions commenced by the CA on behalf of the Secretary of State prior to the day appointed for the operational transfer but still in train will remain valid after the transfers to the Inland Revenue and the Treasury.
- any appointment, authority, decision, approval or consent given in relation to any matter being transferred to the Inland Revenue or the Treasury prior to the day appointed for the operational transfer remains valid and is to be treated as if it had been made by the Inland Revenue or the Treasury.
- any secondary legislation or other document made before the transfer shall continue to have effect. References to the Secretary of State are to be treated as references to the Inland Revenue; and references to DSS or its officers as references to the Inland Revenue and its officers.

The drafting here follows precedents in Orders in Council made under the MoCA.

240. *Paragraph 2* relates to the various documents and forms which are in use by the CA which will have been printed and be ready for use as Inland Revenue forms from the day appointed for the operational transfer. Given the scale of the reprinting task, it ensures that if an old form has to be used any legal consequences of the form cannot be challenged purely on procedural grounds. To do so paragraph 2 allows any references to the Secretary of State or any officer of DSS to be construed as far as necessary as references to the Inland Revenue or as officers of the Inland Revenue.

241. *Paragraph 3* provides for the Inland Revenue to account for contributions to the DSS in any gap between the operational and policy transfer dates.

242. *Paragraph 4* provides that regulations made under section 9(2) of CBA must be made by the Treasury instead of the Secretary of State for Social Security if [paragraph 9 of Schedule 3](#) to this Act comes into force before section 51(4) of the SSA.

Schedule 9: further consequential amendments

243. This *Schedule* makes consequential amendments to the Debtors (Scotland) Act 1987 and the CBA.

Schedule 10: Repeals and revocations

244. This *Schedule* sets out the various provisions of legislation which are repealed or revoked as a result of the Act.

Part I lists the repeals in other Acts which take effect on such days as may be appointed.

Part II shows the regulations which are to be revoked on such days as may be appointed.

Section 27: Interpretation

245. [Section 27](#) sets out two basic definitions used throughout the Act.

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Section 28: Short title, commencement and extent

246. This section sets out which provisions come into force on:
- the passing of the Act, so that secondary legislation under powers conferred by the Act may be made before the day appointed for the operational transfer;
 - an appointed day.
247. The Act provides for multiple appointed days. The intention is that both the operational transfer and the policy transfer will occur on 1 April 1999.
248. The commencement order or orders may contain transitional provisions.
249. Since this Act principally amends legislation only extending to Great Britain, its territorial coverage is mostly limited to Great Britain. Exceptions primarily relate to amendments to United Kingdom-wide tax law.