

CUSTOMS INFORMATION PAPER (09)10

Tribunal Reform

Who should read:	All involved in International Trade who may want to Request a Formal Departmental Review (FDR0 or appeal against a decision issued by HM Revenue & Customs.
What is it about:	Changes to the review and appeal procedures
When effective:	1 April 2009
Extant until/ Expires	Until further notice

1. Background

As part of a wider programme of tribunal reform led by the Ministry of Justice, the Tribunals, Courts and Enforcement Act 2007 (TCEA) created a new tribunal system to replace some 70 tribunals across government. TCEA put in place a framework for a new two-tier tribunal system with specialist Chambers handling particular types of appeal.

From 1 April 2009 the VAT & Duties Tribunals will be abolished and all appeals previously heard by them will be heard by the Tax Chamber of the new tribunal.

The statutory review process will also change on 1 April 2009. HMRC will still be required by law to conduct a review of appealable tax decisions when asked to do so by customers but the review stage will no longer be mandatory for indirect tax decisions (except restoration decisions). Customers will be able to appeal direct to the tribunal.

2. The New Tribunal

The new tribunal system will consist of two tiers:

- The First-tier Tribunal
- The Upper Tribunal

The First-tier Tribunal will hear most appeals in the first instance. Each case will be allocated to one of four categories:

- Default Paper cases, which will usually be completed without a hearing
- Basic cases, which will usually be completed after a hearing, with minimal exchange of documents beforehand

- Standard cases, which will usually be subject to more detailed case management and be completed after a hearing
- Complex cases, which will be subject to detailed case management and be completed after a hearing. These appeals will be where the Tribunal considers that the case -
 1. will require lengthy or complex evidence or proceedings;
 2. involves an important principle of law or a complex issue; or
 3. involves a large financial sum.

A small number of appeals (expected to be those categorised as complex) may be heard by the Upper Tribunal in the first instance, on the agreement of the parties involved and with the consent of the Chamber President.

Costs will still be available in limited circumstances. The Tribunal may make an order:

- for wasted costs; or
- if it considers that either party has acted unreasonably; or
- if the case has been allocated as complex and the appellant does not provide written notification that he wants the proceedings to be excluded from the potential liability for costs.

The criteria for 'complex', 'large financial sum' and 'unreasonably' will be determined by the tribunal.

Appeals against the decisions of the First-tier Tribunal may be made to the Upper Tribunal on a point of law if permission is given by the First-tier or Upper Tribunal.

Appeals against the decisions of the Upper Tribunal may be made to the relevant appellate court on a point of law and where permission is given by the Upper Tribunal or relevant appellate court i.e.

- The Court of Appeal in England and Wales
- The Court of Session in Scotland, and
- The Court of Appeal in Northern Ireland

Further information about the new tribunal rules can be found by following these links:

[Tribunal Procedure \(First-tier Tribunal\) \(Tax Chamber\) Rules 2009](#)

[The Tribunal Procedure \(Upper Tribunal\) Rules 2008](#)

[Tribunal Procedure \(Amendment\) Rules 2009](#)

3. Transitional Arrangements

The new rules are effective from 1 April 2009. The old rules will continue to apply to cases initiated before this date. Therefore 2 systems will operate simultaneously for a short period. For example:

Reviews

If you receive an appealable decision before 1 April 2009 (e.g. dated 31 March 2009) the pre-1 April rules still apply i.e. you can ask for a review at any time until the expiry of the 45 day time limit. You cannot appeal directly against the decision to the tribunal.

Likewise, where HMRC are in the process of carrying out a review, the review will continue according to the pre-1 April provisions and guidance. If you receive a review decision, or the time scale for completing the review expires, before 1 April 2009 (e.g. 31 March 2009) you will still have 45 days in which to appeal. If you do choose to appeal a review decision after 1 April it must be made to the new tribunal.

Appeals against review decisions

Any appeals to the VAT & Duties Tribunals before 1 April 2009 will continue after this date as proceedings before the new tribunal.

The new tribunal may give directions to make sure that proceedings are dealt with fairly, including applying any rules which applied to the previous tribunals, or not applying any of the new tribunal rules.

In addition:

- Any directions made which are in force immediately before 1 April 2009 remain in force on and after that date as if they were directions of the new tribunal, and
- Any time period, for example a period given in a direction pre-1 April, that started to run before 1 April 2009 and which has not expired at that date will continue to apply
- An order for costs may only be made if, and to the extent that, and order could have been made before 1 April 2009 (and for this purpose any costs incurred after 1 April will be treated as if they were incurred before that date).

Appeals against decisions of the VAT & Duties Tribunal

If, at 31 March 2009, either party has already appealed to a court against a decision of the VAT & Duties Tribunals then the appeal will be heard by that court. It will not transfer to the Upper Tribunal.

Where the time limit for an appeal against a decision of the VAT & Duties Tribunal has not expired at 31 March 2009 the appeal period will restart at 1 April 2009 as if 1 April was the date of the appealable decision.

4. Decisions notified on or after 1 April 2009

If you receive a decision **relating to customs matters** dated 1 April 2009 or later you should expect it to contain the following:

"If you do not agree with this decision there are 3 options available. Within 30 days of the date of this letter you can either:

- *Send new information or arguments to me at the above address,*
- *Request a review of the decision by someone not involved in making the disputed decision. Your request must be in writing and should set out the reasons why you do not agree with the decision. Please write to:*

*Customs and International
Review and Appeals Team
7th Floor South West
Alexander House
21 Victoria Avenue
Essex
SS99 1AA, or*

- *Appeal direct to the Tribunal who are independent of HMRC*

If you opt to have your case reviewed you will still be able to appeal to the tribunal if you disagree with the outcome."

The exception will be decisions relating to restoration of seized goods. The appeal process relating to decisions whether or not to restore seized goods will retain the need for a mandatory review. You will be unable to appeal direct to the Tribunal.

If you choose to follow one of the above options please make your decision clear e.g. If you send new information to the decision maker please make it clear that you are asking him to consider it. Alternatively, if you want to request a review please send it to the above address.

The review arrangements will not prevent discussion with the decision maker where both of you think it is appropriate.

The aim of the review is to provide an additional opportunity to resolve disputes without the need for a tribunal hearing. As the review officer will not have been involved in the decision they will provide a fresh viewpoint. Reviews will therefore help make sure that the decision has been both properly made and that in HMRC's view, it is legally correct and is a decision which we would defend at tribunal.

HMRC will have 45 days in which to complete a review but we may contact you to agree and extended deadline if required. If you do not agree to the proposed new deadline the original decision will be deemed to be upheld and you will be able to appeal to the Tribunal. You cannot appeal to the tribunal while a review is ongoing nor can you request a review if you have submitted an appeal to the Tribunal.

5. Further Information

Further information about what to do if you disagree with a HMRC decision is available by following this link:

[Fact sheet HMRC1 on changes to the appeals process from 1 April 2009 \(PDF 32K\)](#)

6. Contact

If you have a query about this Information Paper please contact:

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National Reviews and Appeals Team
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Issued on the **19 March 2009** by the JCCC Secretary, HM Revenue and Customs, Customs & International Directorate. E Mail @ [JCCC Secretariat](mailto:JCCC_Secretariat)

If you have a question about the content of this paper please use the details provided in the 'Contacts' section. For general HMRC queries speak to the National Advice Service on 0845 010 9000 or follow this crumb trail which details how to contact us by phone, e-mail or post: HMRC home (www.hmrc.gov.uk) >Contact Us

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