

2009 No. xxx (C. xx)

REVENUE AND CUSTOMS

**The Finance Act 2008, Schedule 40 (Appointed Day, Savings,
Transitional Provision and Consequential Amendments) Order
2009**

Made - - - - *xxx 2009*

Laid before the House of Commons

Coming into force

The Treasury make the following Order in exercise of the powers conferred by section 122 of the Finance Act 2008(a).

Citation and interpretation

1.—(1) This Order may be cited as the Finance Act 2008, Schedule 40 (Appointed Day, Savings, Transitional Provision and Consequential Amendments) Order 2009.

(2) In this Order a reference to a paragraph (without more) is a reference to that paragraph of Schedule 40 to the Finance Act 2008.

(3) In this Order—

“HMRC” means Her Majesty’s Revenue and Customs(b);

“relevant documents” means documents given to HMRC of a kind inserted in the Table in paragraph 1 of Schedule 24 by paragraph 2(4) and (5);

“relevant tax” means any tax inserted in the Table in paragraph 1 of Schedule 24 by paragraph 2(4) and (5);

“Schedule 24” means Schedule 24 to the Finance Act 2007(c) and

“tax period” has the meaning given in paragraph 28(g) of Schedule 24.

Appointed day

2. The day appointed for the coming into force of Schedule 40 to the Finance Act 2008 is 1st April 2009.

3. In so far as they amend Schedule 24, the entries inserted by paragraph 2 (4) and (5), shall have effect in relation to—

(a) relevant documents relating to tax periods commencing on or after 1st April 2009, where the due date for the return is on or after 1st April 2010;

(a) 2008 c. 9.

(b) Section 4(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that the Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty’s Revenue and Customs.

(c) 2007 c. 11.

- (b) assessments falling within paragraph 2 of Schedule 24 (under-assessment by HMRC) for tax periods commencing on or after 1st April 2009;
- (c) relevant documents relating to all other claims for repayments of relevant tax made on or after 1st April 2010 which are not related to a tax period;
- (d) relevant documents produced under regulations under section 256 of the Inheritance Tax Act 1984(a) (“IHTA 1984”) (regulations about accounts, etc), where the information or document is produced on or after 1st April 2009 and where the date of death was on or after 1st April 2009; and
- (e) in any other case, relevant documents given where a person’s liability to pay relevant tax arises on or after 1st April 2010.

4. In its application in relation to the Table in Schedule 24, as amended by the entries inserted by paragraph 2 (4) and (5), paragraph 1A of Schedule 24(b) (error in taxpayer’s document attributable to another person) has effect in respect of—

- (a) relevant documents relating to tax periods commencing on or after 1st April 2009, where the due date for the return is on or after 1st April 2010;
- (b) relevant documents relating to all other claims for repayments of relevant tax made on or after 1st April 2010 which are not related to a tax period;
- (c) relevant documents produced under regulations under section 256 of IHTA 1984 (regulations about accounts, etc), where the information or document is produced on or after 1st April 2009, where the date of death was on or after 1st April 2009; and
- (d) in any other case, relevant documents given where a person’s liability to pay relevant tax arises on or after 1st April 2010.

Savings

5. Notwithstanding paragraph 21 (consequential repeals), the following provisions shall continue to have effect with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC—

- (a) in the Finance Act 1994(c)—
 - (i) section 8 (penalty for evasion of excise duty), and
 - (ii) paragraphs 12 and 13 of Schedule 7 (insurance premium tax: civil penalties),
- (b) paragraphs 18 and 19 of Schedule 5 to the Finance Act 1996(d) (landfill tax: civil penalties: evasion and misdeclaration or neglect),
- (c) paragraphs 98 and 99 of Schedule 6 to the Finance Act 2000(e) (climate change levy: civil penalties: evasion, liability of directors and misdeclaration or neglect),
- (d) in Schedule 6 to the Finance Act 2001(f)—
 - (i) paragraphs 7 and 8 (aggregates levy: civil penalties: evasion, liability of directors and misdeclaration or neglect), and
 - (ii) paragraph 9A(5)(b)(g) (penalty under paragraph 7 above),
- (e) section 133(2) to (4) of the Finance Act 2002(a) (aggregates levy: amendments to provisions about civil penalties).

(a) 1984 c. 51.
 (b) Paragraph 1A of Schedule 24 to the Finance Act 2007 (c. 11 was inserted by paragraph 3 of Schedule 40 to the Finance Act 2008.
 (c) 1994. c. 9; section 8 was repealed by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 and paragraphs 12 and 13 of Schedule 7 were repealed by paragraph 21(d)(ii) of Schedule 40 to the Finance Act 2008.
 (d) 1996 c. 8; paragraphs 18 and 19 to Schedule 5 were repealed by paragraph 21(e) of Schedule 40 to the Finance Act 2008.
 (e) 2000 c. 17.
 (f) 2001 c. 9; paragraphs 7 and 8 of Schedule 6 were repealed by paragraph 21(i) of Schedule 40 to the Finance Act 2008.
 (g) Paragraph 9A of Schedule 6 to the Finance Act 2001 was inserted by section 133(5) and (6) of the Finance Act 2002 (c. 33). Paragraph 9A(5)(b) was repealed by paragraph 21(i) of Schedule 40 to the Finance Act 2008.

6. Notwithstanding paragraph 29(d) of Schedule 24 (consequential amendments), sections 60 and 61 of the Value Added Tax Act 1994(b) (VAT evasion) shall continue to have effect with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC.

Transitional provision

7. Notwithstanding articles 2 to 4, a person shall not be liable to a penalty under Schedule 40 of the Finance Act 2008 in respect of any tax period for which a return is required to be made before 1st April 2010.

Consequential amendments to enactments

8. Schedule 1 has effect and contains amendments of enactments in consequence of the provisions omitted by paragraph 21 and by paragraph 29 of Schedule 24 to the Finance Act 2007(c) (penalties for errors).

9. Schedule 2 has effect and contains consequential amendments to secondary legislation.

SCHEDULE 1

Article 8

Consequential Amendments-Primary Legislation

Taxes Management Act 1970

10. The Taxes Management Act 1970(d) is amended as follows.

11. In section 59C(4)(e) (surcharges on unpaid income tax and capital gains tax)—

- (a) for “7,” substitute “7 or”;
- (b) omit “,95 or 95A”;
- (c) after “of this Act” insert “or Schedule 24 to the Finance Act 2007”.

12. In section 100B(1)(f) (appeals against penalty determinations) omit “and 95A” and after “93” insert “and”.

13. In section 107A(g) (relevant trustees), in subsection (2)—

- (a) omit “, 95”;
- (b) after “Schedule 1A to this Act” insert “or Schedule 24 to the Finance Act 2007”.

Betting and Gaming Duties Act 1981

14. The Betting and Gaming Duties Act 1981(h) is amended as follows.

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- (a) 2002 c. 33; section 133(2) to (4) of the Finance Act 2002 was repealed by paragraph 21(j) of Schedule 40 to the Finance Act 2008.
 - (b) 1994 c. 23; sections 60 and 61 were omitted by section 97 of and paragraph 29(d) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) to Schedule 27 to that Act.
 - (c) 2007 c. 11. Schedule 24 was amended by section 122 of and Schedule 40 to the Finance Act 2008 (c. 9).
 - (d) 1970 c. 9. Sections 95 and 95A were omitted by section 97 of and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) of Schedule 27 to that Act. Section 7(8) was omitted by section 123 of and paragraph 25(a)(i) to the Finance Act 2008 (c.9).
 - (e) Section 59C was inserted by sections 194 and 199(1) and (2)(a) of the Finance Act 1994 (c. 9). Subsection (4) was amended by section 109(1) of the Finance Act 1995 (c. 4).
 - (f) Section 100B was substituted by section 167 of the Finance Act 1989 (c. 26).
 - (g) Section 107A was inserted by section 103(5) and (7) of the Finance Act 1995 (c. 4).
 - (h) 1981 c. 63.

15. In paragraph 15(1)(a)(ii) of Schedule 1(a) for “section 8 of the Finance Act 1994 (penalty for evasion)” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

Finance Act 1982

16. Schedule 18 to the Finance Act 1982(b) is amended as follows.

17.—(1) In paragraph 10 (penalties for incorrect information etc) in sub-paragraph (1) for “Paragraphs 8 and 9 of Schedule 2 to the principal Act (which penalise inaccurate returns etc. and are in this paragraph referred to as “the penalty provisions”)” substitute “Schedule 24 to the Finance Act 2007 (which penalises inaccurate documents and is in this paragraph referred to as “the penalty provisions”)”.

(2) Omit paragraph 10(2)(b).

Income and Corporation Taxes Act 1988

18. Section 827 of the Income and Corporation Taxes Act 1988(c) (VAT penalties etc) is amended as follows.

19.—(1) In section 827(1)(a)(d) for “60 to 70” substitute “62 and 65 to 70 and Schedule 24 to the Finance Act 2007”.

(2) In section 827(1A)(e) for “8 to 11” substitute “9 to 11” and after “(penalties relating to excise)” insert “or Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(3) In section 827(1B)(a) (insurance premium tax)(f) for “12 to 19” substitute “14 to 19” and at the end omit “or”.

(4) In section 827(1B)(b) at the end insert “or” and after insert—

“(c) Schedule 24 to the Finance Act 2007 (penalties for errors),”.

(5) In section 827(1C)(g) (landfill tax)—

(a) in paragraph (a) omit “or”,

(b) at the end of paragraph (b) add “or”, and

(c) after paragraph (b) add—

“(c) penalty under Schedule 24 to the Finance Act 2007 (penalties for errors),”.

(6) In section 827(1D) (h) (climate change levy)—

(a) in paragraph (c) omit “or”,

(b) at the end of paragraph (d) add “or”, and

(c) after paragraph (d) add—

“(e) penalty under Schedule 24 to the Finance Act 2007 (penalties for errors),”.

(7) In section 827(1E)(i) (aggregates levy)—

(a) in paragraph (c) omit “or”,

(b) at the end of paragraph (d) add “or”, and

(a) Paragraph 15(1) was amended by section 9(9) of and paragraph 62(3)(a) to the Finance Act 1994 (c. 9).

(b) 1982 c. 39.

(c) 1988 c. 1..

(d) Sections 60, 61, 63 and 64 of the Value Added Tax Act 1994(1994 c. 23 were omitted by section 97 of and paragraph 29(d) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) to Schedule 27 to that Act. Section 67 was omitted by section 123 of and paragraph 25(f) of Schedule 41 to the Finance Act 2008 (c. 9).

(e) Subsection 827(1A) was inserted by section 18(7) of the Finance Act 1994 (c. 9). Section 8 of the Finance Act 1994 (c. 9) was omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9).

(f) Subsection 827(1B) was inserted by section 64 of and paragraph 31 of Schedule 7 to the Finance Act 1994 (c. 9). Paragraphs 12 and 13 of Schedule 7 to the Finance Act 1994 were omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9).

(g) Subsection 827(1C) was inserted by section 60 of and paragraph 40 of Schedule 5 to the Finance Act 1996 (c. 8).

(h) Subsection 827(1D) was inserted by section 30(2) and paragraph 4 of Schedule 7 to the Finance Act 2000 (c. 17).

(i) Subsection 827(1E) was inserted by section 49(3) of the Finance Act 2001 (c. 9).

- (c) after paragraph (d) add—
 - “(e) penalty under Schedule 24 to the Finance Act 2007 (penalties for errors),”.
- (8) In section 827(1F) (stamp duty land tax)(a)—
 - (a) in paragraph (a) omit “or”,
 - (b) at the end of paragraph (b) add “or”, and
 - (c) after paragraph (b) add—
 - “(c) penalty under Schedule 24 to the Finance Act 2007 (penalties for errors),”.

Finance Act 1994

- 20.**—(1) Schedule 7 to the Finance Act 1994(b)(insurance premium tax) is amended as follows.
 - (2) In paragraph 14(4)(b) for “paragraph 12 above” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.
 - (3) In paragraph 25(1), in both instances where “paragraphs 12 to 19 above” appears, for “12 to 19” substitute “14 to 19” and in both places after “above” insert “or Schedule 24 to the Finance Act 2007 (penalties for errors)”.
 - (4) In paragraph 25(2a) for “paragraph 12 above” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.
 - (5) Omit paragraph 25(2)(b).

Value Added Tax Act 1994

- 21.** The Value Added Tax Act 1994(c) is amended as follows.
 - 22.** In section 49(3)(a)(d) (transfers of going concerns) for “(excluding sections 59 to 70)” substitute “(excluding sections 59,62 and 65 to 70 and under Schedule 24 to the Finance Act 2007)”.
 - 23.** In section 66(7) (failure to submit EC sales statement or statement relating to section 55A) for “59 to 65” substitute “59,62, 65” and after “76” insert, “and Schedule 24 to the Finance Act 2007”.
 - 24.** In section 69(9)(c) (breaches of regulatory provisions) for “section 60 or 63” substitute “Schedule 24 to the Finance Act 2007”.
 - 25.** In section 69A(7)(a) (breach of record-keeping requirements etc in relation to transactions in gold) for “section 60” substitute “Schedule 24 to the Finance Act 2007”.
 - 26.** In section 69B(7)(a) (breach of record keeping requirements imposed by directions) for “section 60” substitute “Schedule 24 to the Finance Act 2007”.
 - 27.**—(1) In section 70 (mitigation of penalties under sections 60, 63, 64 and 67) in the heading omit “under sections 60, 63, 64 and 67”.
 - (2) In section 70(1)(e) omit “60, 63, 64,”.

(a) Subsection 827(1F) was inserted by section 123 of and paragraph 3(6) of Schedule 18 to the Finance Act 2003 (c. 14).
 (b) 1994 c. 9; section 8 and paragraphs 12 and 13 of Schedule 7 were omitted by section 112 of and paragraph 21(d) of Schedule 40 to the Finance Act 2008 (c. 9).
 (c) 1994 c. 23. Sections 60, 61, 63 and 64 were omitted by section 97 of and paragraph 29(d) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) to Schedule 27 to that Act. Section 67 was omitted by section 123 of and paragraph 25(f) of Schedule 41 to the Finance Act 2008 (c. 9).
 (d) Section 49(3)(a) was amended by section 100(5) of the Finance Act 2007 (c. 9).
 (e) Section 70(1) was amended by section 137(1) and (3) of the Finance Act 2000 (c. 17) and by section 19 of and paragraph 3 of Schedule 19 to the Finance Act 2004 (c. 12).

28. In section 72(13) (offences) for “60 to 70” substitute “62 and 65 to 70 or under Schedule 24 to the Finance Act 2007”.

29.—(1) In section 76(1) (assessment of amounts due by way of penalty, interest or surcharge)(a) for “60” (in both places) substitute “62 and 65”.

(2) In section 76(1) after “69B” (in both places) insert “or under Schedule 24 to the Finance Act 2007”.

(3) Omit section 3(b) to (d).

30. In paragraph 10(3)(b) of Schedule 11A(b) (disclosure of avoidance schemes) for “section 60” substitute “Schedule 24 to the Finance Act 2007”.

Finance Act 1996

31. The Finance Act 1996(c) is amended as follows.

32. In section 55(4) (landfill tax: appeals: general) for “paragraph 18 of Schedule 5 to this Act” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

33. In section 56(6) (landfill tax: appeals: other provisions) for “paragraphs 18 to 24 of that Schedule” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

Finance Act 2000

34.—(1) Schedule 6 to the Finance Act 2000(d) is amended as follows.

(2) In paragraph 41(5)(b) for “paragraph 98 (penalty for evasion)” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(3) In paragraph 55(6)(b) for “paragraph 98 (penalty for evasion)” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(4) In paragraph 80(3)(c) for “paragraph 98(1) (evasion)” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(5) In paragraph 100(5)(b) for “paragraph 98” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(6) In paragraph 101(5)(b) for “paragraph 98” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(7) In paragraph 108(2)(c) for “paragraph 98 (evasion)” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(8) Omit paragraphs 121(1)(h) and paragraph 122(3).

(9) In paragraph 124(5)(b) for “paragraph 98 (penalty for evasion) substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(10) In paragraph 146(5)(b) for “paragraph 98” substitute “Schedule 24 to the Finance Act 2007 (penalties for errors)”.

Finance Act 2004

35.—(1) Section 313 of the Finance Act 2004(e) (duty of parties to notifiable arrangements to notify Board of number, etc.) is amended as follows.

(2) For section 4(a) to (g)(a) substitute—

(a) Section 76(1)(b) was amended by section 137(1) and (4) of the Finance Act 2000 (c. 17).

(b) Schedule 11A was inserted by section 9 of and paragraph 2 of Schedule 2 to the Finance Act 2004 (c. 12).

(c) 1996 c. 8. Paragraphs 18 to 20 of Schedule 5 were omitted by paragraph 21(e) of Schedule 40 to the Finance Act 2008 (c. 9).

(d) 2000 c. 17. paragraphs 98 to 100 of Schedule 6 were omitted by paragraph 21(h) of Schedule 40 to the Finance Act 2008 (c. 9).

(e) 2004 c. 12.

- “(a) any provision relating to incorrect or uncorrected returns made under section 98 of the Finance Act 1986 (c 41) (administration of stamp duty reserve tax),
- (b) Schedule 24 to the Finance Act 2007 (c 11) (penalties for errors), or
- (c) any other prescribed provision.”.

Income Tax (Trading and Other Income) Act 2005

36. The Income Tax (Trading and Other Income) Act 2005(b) is amended as follows.

37.—(1) In section 54(2) (exclusion of double relief for interest)—

- (a) in the third entry in the left hand column of the table, for “60 to 70” substitute “62 and 65 to 70”,
- (b) in the fifth entry in the left hand column of the table, for “8” substitute “9”, and
- (c) in the sixth entry in the left hand column of the table, for “12” substitute “14”.

(2) In section 54(2), at the end of the table add—

“Penalty under Schedule 24 to FA 2007	Excise duties, insurance premium tax, landfill tax, climate change levy, aggregates levy, stamp duty land tax and value added tax”
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38.—(1) In section 869(4) (penalties, interest and VAT surcharges: non-trades etc.)—

- (a) in the third entry in the left hand column of the table, for “60 to 70” substitute “62 and 65 to 70” ,
- (b) in the fifth entry in the left hand column of the table, for “8” substitute “9”, and
- (c) in the sixth entry in the left hand column of the table, for “12” substitute “14”.

(2) In section 869(4), at the end of the table add—

“Penalty under Schedule 24 to FA 2007	Excise duties, insurance premium tax, landfill tax, climate change levy, aggregates levy, stamp duty land tax and value added tax”
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SCHEDULE 2

Article 9

Consequential Amendments-Secondary Legislation

Tax Avoidance Schemes (Information) Regulations 2004

39. The Tax Avoidance Schemes (Information) Regulations 2004(c) are amended as follows.

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- (a) Section 95 of the Taxes Management Act 1970 (c. 9) was omitted by paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11); paragraph 8 of Schedule 2 to the Oil Taxation Act 1975 (c. 22) was omitted by paragraph 21(a) of Schedule 40 to the Finance Act 2008 (c. 9); section 247 of the Inheritance Tax Act 1984 (c. 51) was omitted by paragraph 21(c)(i) of Schedule 40 to the Finance Act 2008; paragraph 20 of Schedule 18 to the Finance Act 1998 (c. 36) was omitted by paragraph 29(c) of Schedule 24 to the Finance Act 2007; paragraph 8 of Schedule 10 to the Finance Act 2003 (C. 14) was omitted by paragraph 21(k)(ii) of Schedule 40 to the Finance Act 2008.
 - (b) 2005 c. 9.
 - (c) S.I. 2004/1864.

40. In regulation 9 (exemption from liability for penalty) for “section 98(4) of the Taxes Management Act” substitute “Schedule 24 to the Finance Act 2007”.

Registered Pension Schemes (Relief at Source) Regulations 2005

41. The Registered Pension Schemes (Relief at Source) Regulations(a) are amended as follows.

42. Omit paragraph (4) of regulation 14.

Duty Stamps Regulations 2006

43. The Duty Stamps Regulations 2006(b) are amended as follows.

44. For regulation 10(8) substitute—

“(8) A relevant penalty is a penalty that has been assessed and notified under Schedule 24 to the Finance Act 2007 (penalties for errors) and that has not been withdrawn or quashed.”

March 2009 *Name*
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints 1st April 2009 as the day on which Schedule 40 to the Finance Act 2008 (c. 9) (“Schedule 40”) comes into force. It also contains savings and transitional provisions. Schedule 40 extends the penalty regime for incorrect returns contained in Schedule 24 to the Finance Act 2007 (c. 11) to cover the additional taxes and duties it inserts into the Table in Schedule 24. It also introduced a new penalty where an error in a taxpayer’s document is attributable to a third party, [as well as making other amendments].

Article 1 provides for citation and interpretation.

Article 2 provides that Schedule 40 comes into force on 1st April 2009.

Article 3 provides for the coming into force on the dates specified, and in relation to the tax periods, claims or other liabilities to pay tax specified, the penalties for making incorrect returns and failure to notify an under-assessment in relation to the new taxes and duties.

Article 4 provides for the coming into force on the dates specified, and in relation to the tax periods, claims or other liabilities to pay tax specified, the penalty in relation to all the taxes and duties now covered by Schedule 24 where an error in a taxpayer’s document is attributable to a third party .

Article 5 preserves the existing penalty provisions for evasion within the stated regimes where the dishonest conduct does not relate to inaccurate returns to, or under-assessments by, HMRC.

Article 6 preserves the existing penalty provisions for VAT evasion involving dishonest conduct which does not relate to inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC.

Article 7 provides that Schedule 40 shall not apply in relation to any tax period for which a return is required to be made before 1 April 2010.

Articles 8 and 9 provide for consequential amendments to primary and secondary legislation.

(a) S.I. 2005/3448.
(b) S.I. 2006/202.

