

*Draft Order laid before the House of Commons under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of that House.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**INCOME TAX**

**The Scottish Rates of Income Tax  
(Consequential Amendments) Order 2018**

*Made* - - - - **\*\*\***

*Coming into force in accordance with article 1*

A draft of this Order was laid before and approved by the House of Commons in accordance with paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998(1).

The Treasury, in exercise of the powers conferred by section 80G(1A) and (2) of the Scotland Act 1998(2), makes the following Order:

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Scottish Rates of Income Tax (Consequential Amendments) Order 2018 and comes into force on the day after the day on which it is made.

(2) The amendments made by this Order have effect in relation to the tax year commencing on 6th April 2018 and subsequent tax years.

**Amendments to the Taxes Management Act 1970**

2.—(1) The Taxes Management Act 1970(3) is amended as follows.

(2) In section 7(6)(4) (notice of liability to income tax and capital gains tax), after “the Scottish basic rate,” insert “a Scottish rate below the Scottish basic rate, the Scottish intermediate rate,”.

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(1) 1998 c. 46. Paragraph 1 of Schedule 7 was relevantly amended by paragraph 16(10)(b) of Schedule 38 to the Finance Act 2014 (c. 26) (“FA 2014”).

(2) Section 80G was inserted by section 25(3) of the Scotland Act 2012 (c. 11) and relevantly amended by paragraph 16 of Schedule 38 to FA 2014 and section 13(11) of the Scotland Act 2016 (c. 11) (“SA 2016”).

(3) 1970 c. 9.

(4) Section 7(6) was amended by paragraph 358 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5), paragraphs 37 and 38 of Schedule 1 to the Finance Act 2008 (c. 9) (“FA 2008”), paragraph 14 of Schedule 38 to FA 2014 and section 5(9) of the Finance Act 2016 (c. 24) (“FA 2016”).

(3) In section 91(3)(c)(5) (effect on interest of reliefs), after “the basic rate,” insert “the Scottish basic rate, a Scottish rate below the Scottish basic rate, the Scottish intermediate rate,”.

#### **Amendment to the Finance Act 2004**

3.—(1) Section 192 (relief at source) of the Finance Act 2004(6) is amended as follows.

(2) In subsection (4A), after “in the individual’s case” insert “that is above the Scottish basic rate limit”.

#### **Amendment to the Income Tax (Trading and Other Income) Act 2005**

4.—(1) Section 669 (reduction in residuary income: inheritance tax on accrued income) of the Income Tax (Trading and Other Income) Act 2005(7) is amended as follows.

(2) In subsection (3A)(c)(8) for “any Scottish rate above the Scottish basic rate” substitute—  
“any Scottish rate that—

- (i) is above the Scottish basic rate, but
- (ii) is not the Scottish intermediate rate”.

#### **Amendments to the Finance (No. 2) Act 2005**

5.—(1) Section 7 of the Finance (No. 2) Act 2005(9) is amended as follows.

(2) In subsection (5A)(10) (charge to income tax on lump sum)—

- (a) omit paragraph (b), and
- (b) in paragraph (c)—
  - (i) for “exceeds the Scottish basic rate limit for that year” substitute “is greater than nil”, and
  - (ii) for “applicable to P” substitute “applicable to P’s Step 3 income for that year”.

#### **Amendments to the Income Tax Act 2007**

6.—(1) The Income Tax Act 2007(11) is amended as follows.

(2) In sections 55B(2)(b)(12) and 55C(1)(c)(13) (entitlement to transferable tax allowance for married couples and civil partners), after “the Scottish basic rate,” insert “a Scottish rate below the Scottish basic rate, the Scottish intermediate rate,”.

(3) In section 58(2)(14) (meaning of “adjusted net income”), omit the words after “by reference to the basic rate for the tax year”.

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(5) Section 91(3)(c) was inserted by paragraph 88 of Schedule 6 to the Finance Act 1971 (c. 68) and amended by paragraph 136 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 c. 1, paragraph 39 of Schedule 39 to FA 2008 and section 4(16) of FA 2016.

(6) 2004 c. 12. Section 192(4A) was inserted by regulation 3(3) of S.I. 2017/468.

(7) 2005 c. 5.

(8) Subsection (3A) was inserted by regulation 8(3) of S.I. 2017/468.

(9) 2005 c. 22.

(10) Subsection (5A) was inserted by regulation 9(3) of S.I. 2017/468.

(11) 2007 c. 3.

(12) Section 55B was inserted by section 11(2) of FA 2014. Subsection (2)(b) was amended by article 14(3)(a) of S.I. 2015/1810 and sections 4(8) and 5(6)(a) of FA 2016.

(13) Section 55C was inserted by section 11(2) of FA 2014. Subsection (1)(c) was amended by article 14(4) of S.I. 2015/1810 and sections 4(8) and 5(7)(a) of FA 2016.

(14) Section 58 was amended by article 14(5) of S.I. 2015/1810.

- (4) In section 414(2)(15) (gift aid: relief for gifts to charity) —
- (a) in paragraph (a), for the words after “deduction of” substitute “income tax at the basic rate, and”, and
  - (b) in paragraph (b) for “the Scottish basic rate limit and any other Scottish rate limit,” substitute “the upper limit for the Scottish basic rate and the limits for any Scottish rates above the Scottish basic rate,”.
- (5) In section 415(16) (gift aid: meaning of “grossed up amount”) omit the words after “by reference to the basic rate for the tax year in which the gift is made”.
- (6) In section 745(17) (rates of tax applicable to income charged under sections 720 and 727 etc)—
- (a) after subsection (1) insert—
    - “(1A) Income tax at a Scottish rate above 0% and below, or equal to, the basic rate is not charged under section 720 or 727 in respect of any income if (and to the corresponding extent that) the income mentioned in section 721(2) or 728(1)(a) has borne tax at the basic rate.”,
  - (b) in subsection (2) for “Subsection (1) does” substitute “Subsections (1) and (1A) do”, and
  - (c) in subsection (3) for “subsection (1) does not apply” substitute “neither of subsections (1) and (1A) applies”.
- (7) In section 828B(5)(18) (conditions to be met)—
- (a) before “the Scottish basic rate” insert “a Scottish rate below the Scottish basic rate,”, and
  - (b) after “the Scottish basic rate” insert “, the Scottish intermediate rate”.
- (8) In section 989(19) (definitions for the purposes of the Income Tax Acts), before the definition of “Scottish rate” insert—
- ““Scottish intermediate rate”, in relation to a tax year, means any Scottish rate for that year which is named “intermediate” by the Scottish rate resolution setting it,”.
- (9) In Schedule 4(20) (index of defined expressions), before the definition of “Scottish rate” insert—
- “Scottish intermediate rate section 989”.

### **Amendment to the Finance Act 2016**

- 7.—(1) The Finance Act 2016(21) is amended as follows.
- (2) Omit section 6(17) to (19) (structure of income tax rates).

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(15) Section 414 was amended by paragraph 20 of Schedule 1 to FA 2008, paragraph 6 of Schedule 2 to the Finance Act 2009 (c. 10) (“FA 2009”), article 14(6) of S.I. 2015/1810 and article 10(2) of S.I. 2017/468.

(16) Section 415 was amended by article 14(7) of S.I. 2015/1810.

(17) Section 745 was amended by paragraph 24 of Schedule 1 to FA 2008, paragraph 18(2) and (3) of Schedule 10 to the Finance Act 2013 (c. 29), and section 4(9) of, and paragraph 63(12)(a) and (b) of Schedule 1 to, FA 2016.

(18) Section 828B was inserted by section 52 of the Finance Act 2009 (c. 10) and was amended by paragraph 9 of Schedule 8 to FA 2014 and section 6 of FA 2016.

(19) The definition of “Scottish rate” was inserted by section 14(13)(c) of SA 2016. There are other amendments to section 989 but none are relevant.

(20) The definition of “Scottish rate” was inserted by section 14(14)(c) of SA 2016. There are other amendments to Schedule 4 but none are relevant.

(21) 2016 c. 24.

**Amendment to the Scottish Rate of Income Tax (Consequential Amendments) Order 2015**

**8.**—(1) The Scottish Rate of Income Tax (Consequential Amendments) Order 2015<sup>(22)</sup> is amended as follows.

(2) Omit article 14(5) to (7) (amendments to the Income Tax Act 2007).

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes consequential amendments to various provisions of income tax legislation following the introduction of a “starter rate” and “intermediate rate” of income tax that will apply to Scottish taxpayers’ non-savings, non-dividend income for the tax year 2018/19. These rates were set by a rate resolution made by the Scottish Parliament on 20th February 2018 in exercise of their power to set rates and thresholds for non-savings non-dividend income provided for in section 80C of the Scotland Act 1998 (c. 26), as amended by the Scotland Act 2016 (c. 11).

The amendments made by this Order ensure that the income tax system works as intended in relation to Scottish taxpayers.

Article 2 amends the Taxes Management Act 1970 (c. 9). Section 7(6) (which specifies one of the situations in which a person is not required to notify chargeability to income tax) is amended so that the condition also operates by reference to the new Scottish rates. Article 2(3) consequentially amends section 91(3)(c) (which makes provision for the effect of relief) to take into account the Scottish rates.

Article 3 amends section 192 of the Finance Act 2004 (c. 12) which deals with relief at source for contributions to registered pension schemes. Scottish taxpayers who pay income tax at a rate higher than the Scottish basic rate will (on the making of a claim) be entitled to have their Scottish basic rate limit and any other Scottish rate limit above the Scottish basic rate limit increased by the amount of the grossed up contribution.

Article 4 makes consequential changes to section 669 of the Income Tax (Trading and Other Income) Act 2005 (c. 5). Section 669, which provides for a reduction in the residuary income of a deceased’s estate in certain circumstances, is amended to reflect the new intermediate rate.

Article 5 amends section 7(5A) of the Finance (No. 2) Act 2005 (c. 22) so that Scottish taxpayers who receive a social security pension lump sum can be taxed at the new Scottish starter rate where appropriate.

Article 6(2) amends sections 55B(2)(b) and 55C(1)(c) of the Income Tax Act 2007 (c. 3) (“ITA”) so that a Scottish taxpayer who is taxed at the new Scottish rates is eligible to make an election to transfer marriage allowance to their spouse or civil partner, or to receive this allowance.

Articles 6(3), (4) and (5) deal with reliefs for gifts to charity under Chapter 2 of Part 8 of ITA (gift aid). Article 6(3) amends the definition of “adjusted net income” in section 58 of ITA to provide that the reference in that section to the “grossed up amount of a gift” is to the amount of that gift grossed up by reference to the main UK basic rate only, and removes a reference to the default basic rate that applies to individuals who are not subject to either a Scottish rate or a main UK rate of income tax. Section 414(2)(a) of ITA is amended to remove references to the Scottish basic rate and the default basic rate. Section 414(2)(b) of ITA is amended to ensure that the rate limit for any Scottish rate above the Scottish basic rate limit (including the new intermediate rate) is increased by the grossed up amount of a qualifying gift, as is currently the case for the basic and higher rate limits applicable across the rest of the UK. Section 415 of ITA is amended in a corresponding manner to section 58 of ITA.

Article 6(6) amends section 745 of ITA, which provides that income tax at the basic rate under sections 720 or 727 is not to be charged where income mentioned in 721(2) or 728(1)(a) has borne tax at the basic rate. Subsection (1A) is inserted to provide for treatment equivalent to subsection (1) in respect of income tax under sections 720 or 727 for a Scottish taxpayer.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Scottish Rates of Income Tax (Consequential Amendments) Order 2018 No. 459*

Article 6(7) amends section 828B(5) of ITA, which sets out the conditions which need to be met for an individual who is UK resident but not domiciled in the UK to obtain an exemption from liability to income tax. The section is amended so that condition E refers also to income tax at a Scottish rate below the Scottish basic rate and at the Scottish intermediate rate.

Article 6(8) and (9) makes consequential changes to the definitions provisions contained in section 989 and Schedule 4 of ITA.

Articles 7 and 8 make housekeeping amendments to the Finance Act 2016 (c. 24) and to the Scottish Rate of Income Tax (Consequential Amendments) Order 2015 (S.I. 2015/1810).

An Impact Assessment covering this instrument was published on 28th May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and revised on 9th November 2015. It is available on the website at <https://www.parliament.uk/documents/impact-assessments/IA15-004A.pdf>. It remains an accurate summary of the impacts that apply to this instrument.