



Finance Act 2001

2001 CHAPTER 9

PART 2

AGGREGATES LEVY

Review and appeal

40 [F¹ Appeals]

- (1) [F²Subject to section 41, an appeal shall lie to an appeal tribunal from any person who is or will be affected by any decision of HMRC with respect to any of the following matters—,]
- (a) whether or not a person is charged in any case with an amount of aggregates levy;
 - (b) the amount of aggregates levy charged in any case and the time when the charge is to be taken as having arisen;
 - (c) the registration of any person or premises for the purposes of aggregates levy or the cancellation of any registration;
 - (d) the person liable to pay the aggregates levy charged in any case, the amount of a person's liability to aggregates levy and the time by which he is required to pay an amount of that levy;
 - (e) the imposition of a requirement on any person to give security, or further security, under section 26 above and the amount and manner of providing any security required under that section;
 - (f) whether or not liability to a penalty or to interest on any amount arises in any person's case under any provision made by or under this Part, and the amount of any such liability;
 - (g) any matter the decision as to which is [F³appealable] under this section in accordance with paragraph 8(6) or (7) of Schedule 6 to this Act;
 - (h) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners under this Part to pay interest on any amount;

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- (i) whether or not any person is required to have a tax representative by virtue of any regulations under section 33 above;
- (j) the giving, withdrawal or variation, for the purposes of any such regulations, of any approval or direction with respect to the person who is to act as another’s tax representative;
- (k) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;
- (l) any matter not falling within the preceding paragraphs the decision with respect to which is contained in
 - [^{F4}(i) an assessment under paragraphs 2 or 3 of Schedule 5 in respect of an accounting period in relation to which any return required to be made by virtue of regulations under section 25 has been made; or
 - (ii) an assessment under any provision of Schedule 5 other than paragraphs 2 or 3.]

- ^{F5}(2)
- ^{F5}(3)
- ^{F5}(4)
- ^{F5}(5)
- ^{F5}(6)
- ^{F5}(7)
- ^{F5}(8)
- ^{F5}(9)

(10) This section has effect subject to paragraph 8(5) of Schedule 6 to this Act.

Textual Amendments	
F1	S. 40 heading substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) , art. 1(2), Sch. 1 para. 303(2) (with Sch. 3 paras. 2-4)
F2	Words in s. 40(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) , art. 1(2), Sch. 1 para. 303(3)(a) (with Sch. 3 paras. 2-4)
F3	Word in s. 40(1)(g) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) , art. 1(2), Sch. 1 para. 303(3)(b) (with Sch. 3 paras. 2-4)
F4	Words in s. 40(1)(l) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) , art. 1(2), Sch. 1 para. 303(3)(c) (with Sch. 3 paras. 2-4)
F5	S. 40(2)-(9) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) , art. 1(2), Sch. 1 para. 303(4) (with Sch. 3 paras. 2-4)

[^{F6}40A Offer of review

- (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under section 40 in respect of the decision.

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- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This section does not apply to the notification of the conclusions of a review.

Textual Amendments

- F6** Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40B Right to require review

- (1) Any person (other than P) who has the right of appeal under section 40 against a decision may require HMRC to review that decision if that person has not appealed to the appeal tribunal under section 40G.
- (2) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

Textual Amendments

- F6** Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40C Review by HMRC

- (1) HMRC must review a decision if—
 - (a) they have offered a review of the decision under section 40A, and
 - (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the appeal tribunal under section 40G.
- (3) HMRC must review a decision if a person other than P notifies them under section 40B.
- (4) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 40G in respect of the decision.

Textual Amendments

- F6** Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40D Extensions of time

- (1) If under section 40A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.

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- (2) If under section 40B another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.
- (3) If notice is given the relevant period is extended to the end of 30 days from—
- (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
- (4) In this section “relevant period” means—
- (a) the period of 30 days referred to in—
 - (i) section 40C(1)(b) (in a case falling within subsection (1)), or
 - (ii) section 40B(2) (in a case falling within subsection (2)), or
 - (b) if notice has been given under subsection (1) or (2), that period as extended (or as most recently extended) in accordance with subsection (3).

Textual Amendments

F6 Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40E Review out of time

- (1) This section applies if—
- (a) HMRC have offered a review of a decision under section 40A and P does not accept the offer within the time allowed under section 40C(1)(b) or 40D(3); or
 - (b) a person who requires a review under section 40B does not notify HMRC within the time allowed under that section or section 40D(3).
- (2) HMRC must review the decision under section 40C if—
- (a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 40G in respect of the decision.

Textual Amendments

F6 Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40F Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 40C or 40E.

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- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purpose of subsection (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
 - (a) by HMRC in reaching the decision, and
 - (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within—
 - (a) a period of 45 days beginning with the relevant date, or
 - (b) such other period as HMRC and P, or the other person, may agree.
- (7) In subsection (6) “relevant date” means—
 - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within section 40A), or
 - (b) the date HMRC received notification from another person requiring review (in a case falling within section 40B), or
 - (c) the date on which HMRC decided to undertake the review (in a case falling within section 40E).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If subsection (8) applies, HMRC must notify P or the other person of the conclusion which the review is treated as having reached.

Textual Amendments

F6 Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

40G Bringing of appeals

- (1) An appeal under section 40 is to be made to the appeal tribunal before—
 - (a) the end of the period of 30 days beginning with—
 - (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or
 - (ii) in a case where a person other than P is the appellant, the date that person becomes aware of the decision, or
 - (b) if later, the end of the relevant period (within the meaning of section 40D).

Status: Point in time view as at 01/04/2009.

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- (2) But that is subject to subsections (3) to (5).
- (3) In a case where HMRC are required to undertake a review under section 40C—
- (a) an appeal may not be made until the conclusion date, and
 - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review by virtue of section 40E—
- (a) an appeal may not be made—
 - (i) unless HMRC have decided whether or not to undertake a review, and
 - (ii) if HMRC decide to undertake a review, until the conclusion date; and
 - (b) any appeal is to be made within the period of 30 days beginning with—
 - (i) the conclusion date (if HMRC decide to undertake a review), or
 - (ii) the date on which HMRC decide not to undertake a review.
- (5) In a case where section 40F(8) applies, an appeal may be made at any time from the end of the period specified in section 40F(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in subsection (1), (3)(b), (4)(b) or (5) if the appeal tribunal gives permission to do so.
- (7) In this section “conclusion date” means the date of the document notifying the conclusion of the review.]

Textual Amendments

F6 Ss. 40A-40G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 304** (with Sch. 3 paras. 2-4)

41 [F7 Appeals: further provisions]

^{F8}(1)

[^{F9}(2) Subject to subsections (2A) and (2B), where an appeal under section 40 relates to a decision (whether or not contained in an assessment) that an amount of aggregates levy is due from any person, it shall not be entertained unless the amount which HMRC have determined to be due has been paid or deposited with them.]

[^{F10}(2A) In a case where the amount determined to be payable as aggregates levy has not been paid or deposited an appeal shall be entertained if—

- (a) HMRC are satisfied (on the application of the appellant), or
- (b) the appeal tribunal decides (HMRC not being so satisfied and on the application of the appellant),

that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship.

(2B) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the appeal tribunal as to the issue of hardship is final.]

(3) On an appeal [^{F11}under section 40] relating to a penalty under paragraph 7 of Schedule 6 to this Act (evasion), the burden of proof as to the matters specified

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in paragraphs (a) to (c) of sub-paragraph (1) of that paragraph shall lie upon the Commissioners.

Textual Amendments

- F7** S. 41 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 305(2)** (with Sch. 3 paras. 2-4)
- F8** S. 41(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 305(3)** (with Sch. 3 paras. 2-4)
- F9** S. 41(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 305(4)** (with Sch. 3 paras. 2-4)
- F10** S. 41(2A)(2B) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 305(5)** (with Sch. 3 paras. 2-4)
- F11** Words in s. 41(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 305(6)** (with Sch. 3 paras. 2-4)

42 Determinations on appeal

- (1) Where, on an appeal under section [F¹²40] above—
 - (a) it is found that an assessment of the appellant ^{F13}... is an assessment for an amount that is less than it ought to have been, and
 - (b) the tribunal give a direction specifying the correct amount,the assessment shall have effect as an assessment of the amount specified in the direction and (without prejudice to any power under this Part to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment.
- (2) On an appeal under section [F¹⁴40] above, the powers of the appeal tribunal in relation to any decision of the Commissioners shall include a power, where the tribunal allow an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either—
 - (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct; or
 - (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, [F¹⁵a review or] a further review of the original decision [F¹⁶as appropriate].
- (3) Where, on an appeal under section [F¹⁷40] above, the appeal tribunal find that a liability to a penalty or to an amount of interest arises, the tribunal shall not give any direction for the modification of the amount payable in respect of that liability except—
 - (a) in exercise of a power conferred on the tribunal by section 46(1) below (penalties) or paragraph 10(3) or (6) of Schedule 5 to this Act, paragraph 6(6) or (9) of Schedule 8 to this Act or paragraph 5(5) or (8) of Schedule 10 to this Act (penalty interest); or
 - (b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Part.
- (4) Where, on an appeal under section [F¹⁸40] above, it is found that the whole or part of any amount paid or deposited in pursuance of section 41(2) above is not due, so much of that amount as is found not to be due shall be repaid with interest [F¹⁹at the rate applicable under section 197 of the Finance Act 1996].

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(5) Where, on an appeal under section [F²⁰40] above, it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit has not been paid, so much of that amount as is found not to have been paid shall be paid with interest [F²¹ at the rate applicable under section 197 of the Finance Act 1996].

(6) Where—

(a) an appeal under section [F²²40] above has been entertained notwithstanding that an amount determined by the Commissioners to be payable as aggregates levy has not been paid or deposited, and

(b) it is found on the appeal that that amount is due,

[F²³ it shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996]

[F²⁴(6A) Interest under subsection (6) shall be paid without any deduction of income tax.]

[F²⁵(7) Sections 85 and 85B of the Value Added Tax Act 1994 (settling of appeals by agreement and payment of tax where there is a further appeal) shall have effect as if—

(a) the references to section 83 of that Act included references to section 40 above, and

(b) the references to value added tax included references to aggregates levy.]

Textual Amendments

- F12** Word in s. 42(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(2)(a)** (with Sch. 3 paras. 2-4)
- F13** Words in s. 42(1)(a) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(2)(b)** (with Sch. 3 paras. 2-4)
- F14** Word in s. 42(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(3)(a)** (with Sch. 3 paras. 2-4)
- F15** Words in s. 42(2)(b) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(3)(b)(i)** (with Sch. 3 paras. 2-4)
- F16** Words in s. 42(2)(b) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(3)(b)(ii)** (with Sch. 3 paras. 2-4)
- F17** Word in s. 42(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(4)** (with Sch. 3 paras. 2-4)
- F18** Word in s. 42(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(5)(a)** (with Sch. 3 paras. 2-4, 9(2)(f))
- F19** Words in s. 42(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(5)(b)** (with Sch. 3 paras. 2-4, 9(2)(f))
- F20** Word in s. 42(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(6)(a)** (with Sch. 3 paras. 2-4, 9(2)(f))
- F21** Words in s. 42(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(6)(b)** (with Sch. 3 paras. 2-4, 9(2)(f))

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- F22** Word in s. 42(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(7)(a)** (with Sch. 3 paras. 2-4, 9(2)(f))
- F23** Words in s. 42(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(7)(b)** (with Sch. 3 paras. 2-4, 9(2)(f))
- F24** S. 42(6A) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(8)** (with Sch. 3 paras. 2-4)
- F25** S. 42(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(9)** (with Sch. 3 paras. 2-4)

43 Adjustments of contracts

(1) Where—

- (a) an agreement to supply a quantity of aggregate to any person has been entered into at any time before the commencement date, and
- (b) on or after that date aggregates levy is charged on that quantity of aggregate, so much of the agreement as requires any payment to be made to the supplier at the time when or after the charge to levy on that quantity of aggregate arises shall be adjusted so as to secure that the cost of discharging the liability to pay the levy, to the extent that it would otherwise have been borne by the supplier, is borne by the person making the payment.

(2) Where—

- (a) an agreement with regard to any sum payable in respect of the use of land (whether the sum is called rent or royalty or otherwise) provides that the amount of the sum is to be calculated by reference to—
 - (i) the turnover of a business, or
 - (ii) the price received for minerals extracted from the land,
- (b) the agreement was entered into before commencement date, and
- (c) the circumstances are such that (had the agreement been made on or after that date) it might reasonably be expected that it would have provided that aggregates levy charged in particular circumstances be ignored in calculating the turnover or price,

the agreement shall be taken to provide that aggregates levy charged in those circumstances shall be ignored in calculating the turnover or, as the case may be, price.

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Review and appeal.