

SCHEDULE 1

Consequential Amendments and Supplemental Provisions – Primary Legislation

Finance Act 2001

304. After section 40 insert—

“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.

(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.

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.

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.

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.

(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

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- (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).

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.

40F Nature of review etc

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

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).
- (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.”.

Commencement Information

II Sch. 1 para. 304 in force at 1.4.2009, see [art. 1\(2\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Paragraph 304.