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STATUTORY INSTRUMENTS

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**2009 No. 571 (C. 39)**

**REVENUE AND CUSTOMS**

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

<i>Made</i>	- - - -	<i>9th March 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>10th March 2009</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Treasury make the following Order in exercise of the powers conferred by section 122 of the Finance Act 2008<sup>(1)</sup>.

**Citation and interpretation**

1.—(1) This Order may be cited as the Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 and comes into force on 1st April 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—

“filing date”, in relation to a relevant document, means—

(i) where the document is required to be given to HMRC, the date by which it is required to be given, and

(ii) where the document is not required to be given to HMRC, the date on which it is given;

“HMRC” means Her Majesty’s Revenue and Customs<sup>(2)</sup>;

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

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

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(1) 2008 c. 9.

(2) 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.

“Schedule 24” means Schedule 24 to the Finance Act 2007<sup>(3)</sup>; 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 their application in relation to penalties payable under paragraph 1 of Schedule 24 (error in taxpayer’s document), the entries inserted by paragraph 2(4) and (5) shall have effect in relation to—

- (a) relevant documents—
  - (i) which relate to tax periods commencing on or after 1st April 2009, and
  - (ii) for which the filing date is on or after 1st April 2010;
- (b) relevant documents relating to all 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 the Inheritance Tax Act 1984<sup>(4)</sup> (“IHTA 1984”) (regulations about accounts, etc), where the date of death is 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.

4. In their application in relation to penalties payable under paragraph 1A of Schedule 24<sup>(5)</sup> (error in taxpayer’s document attributable to another person), the entries inserted by paragraph 2(4) and (5) shall have effect in relation to—

- (a) relevant documents—
  - (i) which relate to tax periods commencing on or after 1st April 2009, and
  - (ii) for which the filing date is on or after 1st April 2010;
- (b) relevant documents relating to all 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 date of death is 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.

5. In their application in relation to assessments falling within paragraph 2 of Schedule 24 (under-assessment by HMRC), the entries inserted by paragraph 2(4) and (5) shall have effect in relation to tax periods commencing on or after 1st April 2009, where the filing date for the relevant document is on or after 1st April 2010.

### **Transitional provisions**

6.—(1) Paragraph 21 (consequential repeals) repeals the provisions listed in paragraph (2) only in so far as those provisions relate to conduct involving dishonesty which relates to—

- (a) an inaccuracy in a document, or
- (b) a failure to notify HMRC of an under-assessment by HMRC.

(2) The provisions referred to in paragraph (1) are—

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(3) 2007 c. 11. Schedule 24 was amended by section 122 of and Schedule 40 to the Finance Act 2008 (c. 9).

(4) 1984 c. 51.

(5) Paragraph 1A of Schedule 24 to the Finance Act 2007 was inserted by paragraph 3 of Schedule 40 to the Finance Act 2008.

- (a) in the Finance Act 1994~~(6)~~—
  - (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~~(7)~~ (landfill tax: civil penalties: evasion and misdeclaration or neglect),
- (c) paragraphs 98 and 99 of Schedule 6 to the Finance Act 2000~~(8)~~ (climate change levy: civil penalties: evasion, liability of directors and misdeclaration or neglect),
- (d) in Schedule 6 to the Finance Act 2001~~(9)~~—
  - (i) paragraphs 7 and 8 (aggregates levy: civil penalties: evasion, liability of directors and misdeclaration or neglect), and
  - (ii) paragraph 9A(5)(b)~~(10)~~ (penalty under paragraph 7 above),
- (e) section 133(2) to (4) of the Finance Act 2002~~(11)~~ (aggregates levy: amendments to provisions about civil penalties).

7. Notwithstanding paragraph 29(d) of Schedule 24 (consequential amendments), sections 60 and 61 of the Value Added Tax Act 1994~~(12)~~ (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.

#### **Consequential amendments to enactments**

8. Schedule 1 contains amendments of enactments in consequence of the provisions omitted by paragraph 21 and by paragraph 29 of Schedule 24.

9. Schedule 2 contains consequential amendments to secondary legislation.

*Steve McCabe*

*Dave Watts*

Two of the Lords Commissioners of Her Majesty's Treasury

9th March 2009

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(6) 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.

(7) 1996 c. 8; paragraphs 18 and 19 of Schedule 5 were repealed by paragraph 21(e) of Schedule 40 to the Finance Act 2008.

(8) 2000 c. 17.

(9) 2001 c. 9; paragraphs 7 and 8 of Schedule 6 were repealed by paragraph 21(i) of Schedule 40 to the Finance Act 2008.

(10) Paragraph 9A of Schedule 6 to the Finance Act 2001 was inserted by section 133(5) and (6) of the Finance Act 2002 (c. 23). Paragraph 9A(5)(b) was repealed by paragraph 21(i) of Schedule 40 to the Finance Act 2008.

(11) 2002 c. 23; section 133(2) to (4) of the Finance Act 2002 was repealed by paragraph 21(j) of Schedule 40 to the Finance Act 2008.

(12) 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.

## SCHEDULE 1

Article 8

## Consequential Amendments - Primary Legislation

**Taxes Management Act 1970**

1. The Taxes Management Act 1970(13) is amended as follows.
2. In section 59C(4)(14) (surcharges on unpaid income tax and capital gains tax) for “section 7, 93(5), 95 or 95A of this Act” substitute “section 7 or 93(5) of this Act or Schedule 24 to the Finance Act 2007”.
3. In section 100B(1)(15) (appeals against penalty determinations) for “sections 93, 93A and 95A” substitute “sections 93 and 93A”.
4. In section 107A(16) (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**

5. The Betting and Gaming Duties Act 1981(17) is amended as follows.
6. In paragraph 15(1)(a)(ii) of Schedule 1(18) after “section 8 of the Finance Act 1994 (penalty for evasion)” insert “or a penalty for a deliberate inaccuracy under paragraph 1 of Schedule 24 to the Finance Act 2007 (penalties for errors)”.

**Finance Act 1982**

7. Paragraph 10 of Schedule 18 to the Finance Act 1982(19) (alternative valuation of ethane for purposes of petroleum revenue tax: penalties for incorrect information etc) is amended as follows.
- 8.—(1) 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 sub-paragraph (2)(b).

**Income and Corporation Taxes Act 1988**

9. Section 827 of the Income and Corporation Taxes Act 1988(20) (VAT penalties etc) is amended as follows.
10. After subsection (1G) add—

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(13) 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) of Schedule 41 to the Finance Act 2008.

(14) Section 59C was inserted by sections 194 and 199(1) and (2)(a) of the Finance Act 1994. Subsection (4) was amended by section 109(1) of the Finance Act 1995 (c. 4).

(15) Section 100B was substituted by section 167 of the Finance Act 1989 (c. 26).

(16) Section 107A was inserted by section 103(5) and (7) of the Finance Act 1995.

(17) 1981 c. 63.

(18) Paragraph 15(1) was amended by section 9(9) of and paragraph 62(3)(a) of Schedule 4 to the Finance Act 1994 (c. 9).

(19) 1982 c. 39.

(20) 1988 c. 1.

“(1H) Where a person is liable to make a payment by way of penalty under Schedule 24 to the Finance Act 2007 (penalties for errors) the payment shall not be allowed as a deduction in computing any income, profits or losses for any corporation tax purposes (but see also subsection (3)(a) below).”.

#### **Finance Act 1994**

**11.**—(1) Schedule 7 to the Finance Act 1994(**21**) (insurance premium tax) is amended as follows.

(2) In paragraph 14(4)(b) after “paragraph 12 above” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(3) In paragraph 15(6)(b) after “paragraph 12 above” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(4) In paragraph 17(4)(b) after “paragraph 12 above” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

#### **Value Added Tax Act 1994**

**12.** The Value Added Tax Act 1994(**22**) is amended as follows.

**13.** In section 66(7) (failure to submit EC sales statement or statement relating to section 55A)—

(a) after “76” insert “and Schedule 24 to the Finance Act 2007”, and

(b) after “any penalty under this section” insert “or that Schedule”.

**14.** In section 69(9)(c) (breaches of regulatory provisions) after “section 60 or 63” insert “ or a penalty under Schedule 24 to the Finance Act 2007”.

**15.** In section 69A(7)(a) (breach of record-keeping requirements etc in relation to transactions in gold) after “section 60” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007”.

**16.** In section 69B(7)(a) (breach of record keeping requirements imposed by directions) after “section 60” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007”.

**17.** In paragraph 10(3)(b) of Schedule 11A(a)(**23**) (disclosure of avoidance schemes) after “section 60” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007”.

#### **Finance Act 1996**

**18.** Schedule 5 to the Finance Act 1996(**24**) (landfill tax) is amended as follows.

**19.** In paragraphs 22(4) and 23(2) after “paragraph 18 above” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

#### **Finance Act 2000**

**20.**—(1) Schedule 6 to the Finance Act 2000(**25**) (climate change levy) is amended as follows.

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(21) 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).

(22) 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. Section 67 was omitted by paragraph 25(f) of Schedule 41 to the Finance Act 2008.

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

(24) 1996 c. 8. Paragraphs 18 to 20 of Schedule 5 were omitted by paragraph 21(e) of Schedule 40 to the Finance Act 2008.

(25) 2000 c. 17. paragraphs 98 to 100 of Schedule 6 were omitted by paragraph 21(h) of Schedule 40 to the Finance Act 2008.

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(2) In paragraph 41(5)(b) after “paragraph 98 (penalty for evasion)” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(3) In paragraph 55(6)(b) after “paragraph 98 (penalty for evasion)” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(4) In paragraph 124(5)(b) after “paragraph 98 (penalty for evasion)” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(5) In paragraph 125(8)(b) after “paragraph 98 (penalty for evasion)” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(6) In paragraph 127(6)(b) after “paragraph 98 (penalty for evasion)” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

(7) In paragraph 146(5)(b) after “paragraph 98” insert “or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

### **Finance Act 2001**

**21.** Part 2 of the Finance Act 2001(26) is amended as follows.

**22.** In section 25(5)(b) (aggregates levy: returns and payment of levy) after “(penalty for evasion)” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

**23.** In section 45(3) after “Schedule 6 to this Act” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

**24.** In paragraph 1(6)(b) of Schedule 4 after “(penalty for evasion)” insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

**25.** In paragraphs 1(5)(b), 2(8)(b) and 4(6)(b) of Schedule 7 after “(penalty for evasion)” in each case insert “or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)”.

### **Finance Act 2004**

**26.—(1)** Section 313 of the Finance Act 2004(27) (tax avoidance schemes: duty of parties to notifiable arrangements to notify Board of number, etc.) is amended as follows.

(2) For subsection (4)(a) to (g)(28) substitute—

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

### **Income Tax (Trading and Other Income) Act 2005**

**27.** The Income Tax (Trading and Other Income) Act 2005(29) is amended as follows.

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(26) 2001 c. 9. Paragraphs 7 to 9 and paragraph 9A(5)(b) of Schedule 6 were omitted by paragraph 21(i) of Schedule 40 to the Finance Act 2008.

(27) 2004 c. 12.

(28) Section 95 of the Taxes Management Act 1970 was omitted by paragraph 29(a) of Schedule 24 to the Finance Act 2007; 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; section 247 of the Inheritance Tax Act 1984 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.

(29) 2005 c. 5.

**28.** In section 54(2) (no deduction of certain amounts in calculating profits of a trade), at the end of the table add—

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“Penalty under Schedule 24 to FA 2007	Various taxes and excise duties”.
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**29.** In section 869(4) (no deduction of certain amounts in calculating profits or other income charged to income tax), at the end of the table add—

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“Penalty under Schedule 24 to FA 2007	Various taxes and excise duties”.
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## SCHEDULE 2

Article 9

### Consequential Amendments - Secondary Legislation

#### **Registered Pension Schemes (Relief at Source) Regulations 2005**

1. The Registered Pension Schemes (Relief at Source) Regulations 2005(**30**) are amended as follows.
2. Omit paragraph (4) of regulation 14.

#### **Duty Stamps Regulations 2006**

3. The Duty Stamps Regulations 2006(**31**) are amended as follows.
4. 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.”

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### **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 transitional provisions and consequential amendments. 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 introduces a new penalty where an error in a taxpayer’s document is attributable to a third party, as well as making other amendments.

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(30) S.I. 2005/3448.

(31) S.I. 2006/202.

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Article 1 provides for citation and interpretation.

Article 2 appoints 1st April 2009 as the day on which Schedule 40 comes into force.

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, of the penalties for making incorrect returns 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, of 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 provides for the coming into force on the date specified of the penalty for failure to notify an under-assessment in relation to the new taxes and duties.

Article 6 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 7 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.

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

An Impact Assessment on the wider penalties reform was published by HMRC on 27th March 2008 and is available from HMRC'S website at <http://www.hmrc.gov.uk/ria/penalties.pdf> .