



# Finance Act 2001

## 2001 CHAPTER 9

### PART 2

#### AGGREGATES LEVY

##### *Charging provisions*

#### **16 Charge to aggregates levy**

- (1) A levy, to be known as aggregates levy, shall be charged in accordance with this Part on aggregate subjected to commercial exploitation.
- (2) The charge to the levy shall arise whenever a quantity of taxable aggregate is subjected, on or after the commencement date, to commercial exploitation in the United Kingdom.
- (3) The person charged with the levy arising on any occasion on a quantity of aggregate subjected to commercial exploitation shall be the person responsible for its being so subjected on that occasion.
- (4) The levy shall be charged at the rate of £1.60 per tonne of aggregate subjected to commercial exploitation; and the amount of levy charged on a part of a tonne of aggregate shall be the proportionately reduced amount.
- (5) The levy shall be under the care and management of the Commissioners of Customs and Excise (in this Part referred to as “the Commissioners”).
- (6) In this Part “the commencement date” means such date as the Treasury may by order made by statutory instrument appoint for the purposes of this section.

#### **17 Meanings of “aggregate” and “taxable aggregate”**

- (1) In this Part “aggregate” means (subject to section 18 below) any rock, gravel or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it.

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- (2) For the purposes of this Part any quantity of aggregate is, in relation to any occasion on which it is subjected to commercial exploitation, a quantity of taxable aggregate except to the extent that—
- (a) it is exempt under this section;
  - (b) it has previously been used for construction purposes (whether before or after the commencement date);
  - (c) it is, or derives from, any aggregate that has already been subjected to a charge to aggregates levy;
  - (d) it is aggregate that was removed from its originating site before the commencement date.
- (3) For the purposes of this Part aggregate is exempt under this section if—
- (a) it is rock that has not been subjected to an industrial crushing process;
  - (b) it consists wholly of aggregate won by being removed from the ground on the site of any building or proposed building in the course of excavations lawfully carried out—
    - (i) in connection with the modification or erection of the building; and
    - (ii) exclusively for the purpose of laying foundations or of laying any pipe or cable;
  - (c) it consists wholly of aggregate won—
    - (i) by being removed from the bed of any river, canal or watercourse (whether natural or artificial) or of any channel in or approach to any port or harbour (whether natural or artificial); and
    - (ii) in the course of the carrying out of any dredging undertaken exclusively for the purpose of creating, restoring, improving or maintaining that river, canal, watercourse, channel or approach;
  - (d) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any highway or proposed highway and in the course of excavations carried out—
    - (i) for the purpose of improving or maintaining the highway or of constructing the proposed highway; and
    - (ii) otherwise than wholly or mainly for the purpose of extracting that aggregate; or
  - (e) it consists wholly of the spoil, waste or other by-products resulting from the extraction or other separation from any quantity of aggregate of any china clay or ball clay.
- (4) For the purposes of this Part a quantity of any aggregate shall be taken to be a quantity of aggregate that is exempt under this section if it consists wholly or mainly of any one or more of the following, or is part of anything so consisting, namely—
- (a) coal, lignite, slate or shale;
  - (b) the spoil from any process by which coal has been separated from other rock after being extracted or won with that other rock;
  - (c) the spoil or waste from, or other by-products of—
    - (i) any industrial combustion process, or
    - (ii) the smelting or refining of metal;
  - (d) the drill-cuttings resulting from any operations carried out in accordance with a licence granted under the Petroleum Act 1998 (c. 17) otherwise than in relation to petroleum situated in the strata in Great Britain;

- (e) anything resulting from works carried out in exercise of powers which are required to be exercised in accordance with, or are conferred by, provision made by or under the New Roads and Street Works Act 1991 (c. 22), the Roads (Northern Ireland) Order 1993 (S.I. 1993/3160 (N.I. 15)) or the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19));
  - (f) clay, soil or vegetable or other organic matter.
- (5) For the purposes of this section aggregate subjected to exploitation in the United Kingdom is aggregate that has already been subjected to a charge to aggregates levy if, and only if—
- (a) there has been a previous occasion on which a charge to aggregates levy on that aggregate has arisen; and
  - (b) at least some of the aggregates levy previously charged on that aggregate is either—
    - (i) levy in respect of which there is or was no entitlement to a tax credit; or
    - (ii) levy in respect of which any entitlement to a tax credit is or was an entitlement to a tax credit of an amount less than the amount of the levy charged on it.
- (6) For the purposes of subsection (5)(b) above, any credit the entitlement to which arises in a case which—
- (a) falls within section 30(1)(c) below, and
  - (b) is prescribed for the purposes of this subsection,
- shall be disregarded.
- (7) In this section—
- “coal” has the same meaning as in the Coal Industry Act 1994 (c. 21); and
  - “highway” includes any road within the meaning of the Roads (Scotland) Act 1984 (c. 54) or the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)).

## 18 Exempt processes

- (1) In this Part references to aggregate—
- (a) include references to the spoil, waste, off-cuts and other by-products resulting from the application of any exempt process to any aggregate; but
  - (b) do not include references to anything else resulting from the application of any such process to any aggregate.
- (2) In this Part “exempt process” means—
- (a) the cutting of any rock to produce dimension stone;
  - (b) any process by which a relevant substance is extracted or otherwise separated (whether as part of the process of winning it from any land or otherwise) from any aggregate;
  - (c) any process for the production of lime or cement from limestone or from limestone and some other substance.
- (3) In this section “relevant substance” means any of the following—
- (a) anhydrite;
  - (b) ball clay;

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- (c) barytes;
  - (d) calcite;
  - (e) china clay;
  - (f) feldspar;
  - (g) fireclay;
  - (h) flint;
  - (i) fluorspar;
  - (j) fuller’s earth;
  - (k) gems and semi-precious stones;
  - (l) gypsum;
  - (m) any metal or the ore of any metal;
  - (n) muscovite;
  - (o) perlite;
  - (p) potash;
  - (q) pumice;
  - (r) rock phosphates;
  - (s) sodium chloride;
  - (t) talc;
  - (u) vermiculite.
- (4) The Treasury may by order made by statutory instrument—
- (a) modify the list of substances in subsection (3) above by adding any substance to that list or by removing any substance from it; and
  - (b) make any such transitional provision in connection with the modification of that list under this subsection as they may think fit.
- (5) The Treasury shall not make an order under subsection (4) above by virtue of which any substance ceases to be a relevant substance unless a draft of the order has been laid before Parliament and approved by resolution of the House of Commons.
- (6) A statutory instrument containing an order under subsection (4) above that has not had to be approved in draft for the purposes of subsection (5) above shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **19 Commercial exploitation**

- (1) For the purposes of this Part a quantity of aggregate is subjected to exploitation if, and only if—
- (a) it is removed from a site falling within subsection (2) below;
  - (b) it becomes subject to an agreement to supply it to any person;
  - (c) it is used for construction purposes; or
  - (d) it is mixed, otherwise than in permitted circumstances, with any material or substance other than water.
- (2) The sites which, in relation to any quantity of aggregate, fall within this subsection are—
- (a) the originating site of the aggregate;

- (b) any site which is not the originating site of the aggregate but is registered under the name of a person who is the operator of that originating site, or is one of its operators;
  - (c) any site not falling within paragraph (a) or (b) above to which the quantity of aggregate had been removed for the purpose of having an exempt process applied to it on that site but at which no such process has been applied to it.
- (3) For the purposes of this Part the exploitation to which a quantity of aggregate is subjected shall be taken to be commercial exploitation if, and only if—
  - (a) it is subjected to exploitation in the course or furtherance of a business carried on by the person, or one of the persons, responsible for subjecting it to exploitation;
  - (b) the exploitation to which it is subjected does not consist in its removal from one registered site to another in a case where both sites are registered under the name of the same person;
  - (c) the exploitation to which it is subjected does not consist in or require its removal to a registered site for the purpose of having an exempt process applied to it on that site;
  - (d) the exploitation to which it is subjected does not consist in or require its removal to any premises for the purpose of having china clay or ball clay extracted or otherwise separated from it on that site; and
  - (e) the exploitation to which it is subjected is not such that, as a result and without its being subjected to any process involving its being mixed with any other substance or material (apart from water), it again becomes part of the land at the site from which it was won.
- (4) Where, at the time when any aggregate is won from any site, the same person is in occupation of both—
  - (a) that site, and
  - (b) adjacent land which is occupied, together with that site—
    - (i) for the purposes of the carrying on of any agricultural business, or
    - (ii) for the purposes of the carrying on of any forestry business or otherwise for the purposes of forestry,subsection (3)(e) above shall have effect as if the reference to the land at the site from which the aggregate was won included the adjacent land, so long as it and that site continue to be occupied by that person for such purposes.
- (5) For the purposes of this Part where a quantity of aggregate is subjected to exploitation, the exploitation shall be taken to be in the United Kingdom if, and only if, the aggregate is in the United Kingdom or United Kingdom waters when it is subjected to exploitation.
- (6) For the purposes of this section a quantity of aggregate becomes subject to an agreement to supply it to any person—
  - (a) except to the extent that it is not separately identifiable at the time when the agreement is entered into, at that time; and
  - (b) to that extent, at the time when it is appropriated to the agreement;but references in this Part to the supply of a quantity of aggregate do not include references to any supply which is effected, or is to be effected, by the transfer or creation of any interest or right in or over land.

- (7) For the purposes of this section a quantity of aggregate is mixed with a material or substance in permitted circumstances if—
- (a) the material or substance with which it is mixed consists wholly of a quantity of taxable aggregate that has not previously been subjected to commercial exploitation in the United Kingdom; and
  - (b) the mixing takes place on a site which, in a case where it falls within subsection (2) above in relation to any part of the aggregate included in the mixture, so falls in relation to every part of it.

## **20 Originating sites**

- (1) In this Part references, in relation to any aggregate, to its originating site are references (subject to subsection (2) below)—
- (a) in the case of aggregate which has been won from the seabed of any area of sea in the United Kingdom or United Kingdom waters and is not rock, to the site where it is first landed after being so won;
  - (b) in the case of aggregate which results from the application of an exempt process to any aggregate and is not rock, to the site where that process was so applied;
  - (c) in the case of rock, to the site at which it is first subjected to an industrial crushing process; and
  - (d) in any other case, to the site from which the aggregate was won or, as the case may be, from which it was most recently won.
- (2) Where any aggregate which is on its originating site on the commencement date has been mixed before that date with aggregate the originating site of which would (but for this subsection) be different, the site where the mixture is situated on that date shall be deemed for the purposes of this Part to be the originating site of all the aggregate comprised in the mixture.

## **21 Operators of sites**

- (1) For the purposes of this Part the persons operating a site are each of the following—
- (a) the person who occupies the site; and
  - (b) if a person other than the occupier exercises any right to exercise control over aggregate on that site, that other person;
- and “operator”, in relation to a site, shall be construed accordingly.
- (2) In subsection (1) above the reference to exercising control over aggregate on a site is a reference to doing any of the following, that is to say—
- (a) winning aggregate from land at that site;
  - (b) carrying out an industrial crushing process at that site in relation to any rock;
  - (c) carrying out any exempt process at that site;
  - (d) storing aggregate at that site.

## **22 Responsibility for exploitation of aggregate**

- (1) Subject to subsection (2) below, the persons who shall be taken for the purposes of this Part to be responsible for subjecting a quantity of aggregate to exploitation are each of the following—

- (a) in a case of the exploitation of a quantity of aggregate by its removal from its originating site or from a connected site, the operator of that site;
  - (b) in a case of the exploitation of a quantity of aggregate by its removal from a site falling within section 19(2)(c) above, the operator of the site and (if different) the owner of the aggregate at the time when the removal takes place;
  - (c) in a case of the exploitation of a quantity of aggregate—
    - (i) by its being subjected, at a time when it is not on its originating site or a connected site, to any agreement, or
    - (ii) by its being used at such a time for construction purposes, the person agreeing to supply it or using it for construction purposes;
  - (d) in a case of the exploitation of a quantity of aggregate—
    - (i) by its being subjected, at a time when it is on its originating site or a connected site, to any agreement, or
    - (ii) by its being used at such a time for construction purposes, the person mentioned in paragraph (c) above and (if different) the operator of that site;
  - (e) in a case of the exploitation of a quantity of aggregate by its being mixed at premises that are not comprised in its originating site or a connected site with any material or substance, the owner of the aggregate at the time when the mixing takes place and the occupier of the premises where it takes place;
  - (f) in a case of the exploitation of a quantity of aggregate by its being mixed at its originating site or a connected site with any material or substance, the owner of the aggregate at the time when the mixing takes place and (if different) the operator of the site.
- (2) A person who is responsible for subjecting a quantity of aggregate to exploitation shall not be taken for the purposes of this Part to be responsible for subjecting it to commercial exploitation unless that takes place in the course or furtherance of a business carried on by him.
- (3) Where by virtue of this section more than one person is charged with aggregates levy, their liabilities under this Part as persons charged with the levy shall be joint and several.
- (4) In this section “connected site”, in relation to any quantity of aggregate, means any site that falls in relation to that quantity of aggregate within section 19(2)(b).

## **23 Weight of aggregate**

- (1) The Commissioners may make regulations for determining the weight of any aggregate for the purposes of aggregates levy.
- (2) The regulations may—
  - (a) prescribe rules for determining the weight;
  - (b) authorise rules for determining the weight to be specified by the Commissioners in a prescribed manner;
  - (c) authorise rules for determining the weight to be agreed between the person charged with the levy and a person acting under the authority of the Commissioners.
- (3) The regulations may, in particular, provide for the rules prescribed or authorised under the regulations to include rules about—

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- (a) the method by which the weight is to be determined;
  - (b) the time by reference to which the weight is to be determined;
  - (c) the discounting of constituents (such as water).
- (4) The regulations may include provision that rules specified by virtue of subsection (2)(b) above—
- (a) are to have effect only in such cases as may be described in the rules; and
  - (b) are not to have effect in particular cases unless the Commissioners are satisfied that such conditions as may be set out in the rules are met in those cases.
- (5) Conditions for which provision is made by virtue of subsection (4)(b) above may be framed by reference to such factors as the Commissioners think fit (such as the consent, in a particular case, of a person acting under the authority of the Commissioners).
- (6) The regulations may include provision that—
- (a) where rules are agreed as mentioned in subsection (2)(c) above, and
  - (b) the Commissioners believe that they should no longer be applied (whether because they do not give an accurate indication of the weight or are not being fully observed or for some other reason),
- the Commissioners may direct that the agreed rules shall no longer have effect.

#### *Administration and enforcement*

## **24 The register**

- (1) It shall be the duty of the Commissioners to establish and maintain a register of persons who are required to be registered for the purposes of aggregates levy.
- (2) A person is required to be registered for the purposes of aggregates levy if he—
- (a) carries out taxable activities, and
  - (b) is not exempted from registration by regulations under subsection (4) below.
- (3) For the purposes of subsection (2) above a person carries out a taxable activity if a quantity of aggregate is subjected to commercial exploitation in the United Kingdom in circumstances in which he is responsible for its being so subjected.
- (4) The Commissioners may by regulations provide for persons carrying out taxable activities to be, to such extent and subject to such conditions or restrictions as may be prescribed, either—
- (a) exempt from the requirement of registration; or
  - (b) exempt from such obligations or liabilities imposed by or under this Part on persons required to be registered for the purposes of aggregates levy as may be prescribed.
- (5) The Commissioners shall keep such information in the register as they consider it appropriate so to keep for the purposes of the care and management of aggregates levy.
- (6) In particular, where it appears to the Commissioners that any person is operating or using any premises, or intends to operate or use any premises—
- (a) for winning any aggregate,
  - (b) for carrying out an industrial crushing process in relation to any rock,
  - (c) for applying an exempt process to any aggregate,



- (d) for storing any aggregate, or
  - (e) for the first landing in the United Kingdom of aggregate won from the seabed of any area of sea in the United Kingdom or United Kingdom waters,
- they may, if they think fit, register those premises, in any entry relating to that person and under his name, as a registered site.
- (7) Where any premises are registered in accordance with subsection (6) above as a registered site, the particulars included in the register shall set out as the boundaries of the site such boundaries as appear to the Commissioners best to secure that avoidance of levy is not facilitated by the registration of any part of any premises that is not used or operated as mentioned in subsection (6) above.
- (8) Where any entry in the register at any time specifies that any premises registered under a person's name as a registered site are to be taken to be the originating site of—
- (a) any aggregate comprising rock subjected to an industrial crushing process there,
  - (b) any aggregate resulting from the carrying out of any exempt process there, or
  - (c) any aggregate won or landed there,
- any question for the purposes of this Part as to the boundaries at that time of the originating site of any such aggregate shall be conclusively determined in accordance with that entry.
- (9) Schedule 4 to this Act (provisions with respect to registration for the purposes of aggregates levy) shall have effect.
- (10) The preceding provisions of this section and the provisions of Schedule 4 to this Act shall come into force on such date as the Treasury may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different purposes.

## **25 Returns and payment of levy**

- (1) The Commissioners may by regulations make provision—
- (a) for persons charged with aggregates levy to be liable to account for it by reference to such periods (“accounting periods”) as may be determined by or under the regulations;
  - (b) for persons who are or are required to be registered for the purposes of aggregates levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and
  - (c) for persons who are required to account for aggregates levy for any period to become liable to pay the amounts due from them at such times and in such manner as may be so determined.
- (2) Without prejudice to the generality of the powers conferred by subsection (1) above, regulations under this section may contain provision—
- (a) for aggregates levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period;
  - (b) for the correction of errors made when accounting for aggregates levy by reference to any period;

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- (c) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;
  - (d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;
  - (e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d) above;
  - (f) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under section 197 of the Finance Act 1996 (c. 8) for such period as may be determined in accordance with the regulations.
- (3) Subject to the following provisions of this section, if any person (“the taxpayer”) fails—
- (a) to comply with so much of any regulations under this section as requires him, at or before a particular time, to make a return for any accounting period, or
  - (b) to comply with so much of any regulations under this section as requires him, at or before a particular time, to pay an amount of aggregates levy due from him,
- he shall be liable to a penalty of £250.
- (4) Liability to a penalty under subsection (3) above shall not arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal—
- (a) that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with regulations; and
  - (b) that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without reasonable excuse to make it.
- (5) Where, by reason of any failure falling within paragraph (a) or (b) of subsection (3) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 7 of Schedule 6 to this Act (penalty for evasion),
- that person shall not, by reason of that failure, be liable also to a penalty under that subsection (3).
- (6) In subsection (1)(b) above the reference to a person who is required to be registered for the purposes of aggregates levy includes a reference to a person who would be so required but for any exemption conferred by regulations under section 24(4) above.

## 26 Security for levy

- (1) Where it appears to the Commissioners necessary to do so for the protection of the revenue they may require any person who is or is required to be registered to give security, or further security, for the payment of any aggregates levy which is or may become due from him.

- (2) The power of the Commissioners to require any security, or further security, under this section shall be a power to require security, or further security, of such amount and in such manner as they may determine.
- (3) A person who is responsible for any aggregate being subjected to commercial exploitation in the United Kingdom is guilty of an offence if, at the time it is so subjected—
  - (a) he has been required to give security under this section; and
  - (b) he has not complied with that requirement.
- (4) A person guilty of an offence under this section shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.
- (5) Sections 145 to 155 of the Customs and Excise Management Act 1979 (c. 2) (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to an offence under this section as they apply in relation to offences and penalties under the customs and excise Acts.
- (6) In subsection (1) above the reference to a person who is required to be registered for the purposes of aggregates levy includes a reference to a person who would be so required but for any exemption conferred by regulations under section 24(4) above.

## **27 Recovery and interest**

Schedule 5 to this Act (which makes provision for the recovery of amounts of aggregates levy due from any person and for the interest payable on such amounts) shall have effect.

## **28 Evasion, misdeclaration and neglect**

Schedule 6 to this Act (which makes provision for and in connection with the imposition of criminal and civil penalties for the evasion of aggregates levy and for related misconduct) shall have effect.

## **29 Information and evidence**

Schedule 7 to this Act (which provides for the supply of information to the Commissioners, for the powers under which the Commissioners may collect information for enforcement purposes and about evidence) shall have effect.

### *Credits and repayments*

## **30 Credit for aggregates levy**

- (1) The Commissioners may, in accordance with the following provisions of this section, by regulations make provision in relation to cases where, after a charge to aggregates levy has arisen on any quantity of aggregate—
  - (a) any of that aggregate is exported from the United Kingdom in the form of aggregate;
  - (b) an exempt process is applied to any of that aggregate;
  - (c) any of that aggregate is used in a prescribed industrial or agricultural process;

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- (d) any of that aggregate is disposed of (by dumping or otherwise) in such manner not constituting its use for construction purposes as may be prescribed; or
  - (e) the whole or any part of a debt due to a person responsible for subjecting the aggregate to commercial exploitation is written off in his accounts as a bad debt.
- (2) The provision that may be made in relation to any such case as is mentioned in subsection (1) above is provision—
- (a) for such person as may be specified in the regulations to be entitled to a tax credit in respect of any aggregates levy charged on the aggregate in question;
  - (b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for aggregates levy due from him for such accounting period or periods as may be determined in accordance with the regulations; and
  - (c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to aggregates levy, to a repayment of levy of an amount so determined.
- (3) Regulations under this section may contain any or all of the following provisions—
- (a) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed;
  - (b) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such requirements as may be determined in accordance with the regulations;
  - (c) provision requiring a claim for a tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined;
  - (d) provision requiring a person claiming any entitlement to a tax credit to keep, for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined;
  - (e) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with;
  - (f) provision for interest at the rate applicable under section 197 of the Finance Act 1996 (c. 8) to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit;
  - (g) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners.
- (4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may also contain—
- (a) provision for ascertaining whether, when and to what extent an amount is to be taken for the purposes of any regulations under this section to have been written off in any accounts as a bad debt;
  - (b) provision requiring a person who for the purposes of any such regulations is taken to have written off any amount as a bad debt to keep, for such period and in such form and manner as may be prescribed, information relating to anything subsequently paid in respect of the amount written off;
  - (c) provision for the withdrawal of the whole or an appropriate part of any tax credit relating to an amount taken to have been written off as a bad debt where

the whole or any part (or further part) of the amount written off is subsequently paid;

- (d) provision for ascertaining whether, and to what extent, anything received by any person is to be taken as a payment of, or of a part of, an amount taken, for the purposes of any regulations under this section, to have been written off;
  - (e) provision for determining the value for the purposes of provision made by virtue of paragraph (d) above of things received otherwise than in the form of money.
- (5) Regulations made under this section shall have effect subject to the provisions of section 32 below.

### **31 Repayments of overpaid levy**

- (1) Where a person has paid an amount to the Commissioners by way of aggregates levy which was not levy due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall not be liable to repay an amount under this section except on the making of a claim for that purpose.
- (3) A claim under this section must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners.
- (4) The preceding provisions of this section are subject to the provisions of section 32 below.
- (5) Except as provided by this section, the Commissioners shall not, by virtue of the fact that it was not levy due to them, be liable to repay any amount paid to them by way of aggregates levy.

### **32 Supplemental provisions about repayments etc**

- (1) The Commissioners shall not be liable, on any claim for a repayment of aggregates levy, to repay any amount paid to them more than three years before the making of the claim.
- (2) In the case of any claim for a repayment of an amount of aggregates levy other than a claim to a repayment to which a person is entitled by virtue of tax credit regulations, it shall be a defence to that claim that the repayment of that amount would unjustly enrich the claimant.
- (3) Subsection (4) below applies for the purposes of subsection (2) above where—
  - (a) there is an amount paid by way of aggregates levy which (apart from subsection (2) above) would fall to be the subject of a repayment of aggregates levy to any person (“the taxpayer”); and
  - (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.
- (4) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any provisions relating to aggregates levy, that loss or damage shall

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- be disregarded, except to the extent of the quantified amount, in the making of any determination as to—
- (a) whether or to what extent the repayment of an amount to the taxpayer would enrich him; or
  - (b) whether or to what extent any enrichment of the taxpayer would be unjust.
- (5) In subsection (4) above “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions.
- (6) The reference in subsection (4) above to provisions relating to aggregates levy is a reference to any provisions of—
- (a) any enactment or subordinate legislation (whether or not still in force) which relates to that levy or to any matter connected with it; or
  - (b) any notice published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to aggregates levy.
- (7) Schedule 8 to this Act (which contains further provision about payments and repayments by the Commissioners and about the setting off of amounts due to or from the Commissioners under this Part and the setting of other amounts against such amounts) shall have effect.

#### *Non-resident taxpayers*

### **33 Appointment of tax representatives**

- (1) The Commissioners may by regulations make provision for securing that every non-resident taxpayer has a person resident in the United Kingdom to act as his tax representative for the purposes of aggregates levy.
- (2) Regulations under this section may, in particular, contain any or all of the following—
- (a) provision requiring notification to be given to the Commissioners where a person becomes a non-resident taxpayer;
  - (b) provision requiring the appointment of tax representatives by non-resident taxpayers;
  - (c) provision for the appointment of a person as a tax representative to take effect only where the person appointed is approved by the Commissioners;
  - (d) provision authorising the Commissioners to give a direction requiring the replacement of a tax representative;
  - (e) provision authorising the Commissioners to give a direction requiring a person specified in the direction to be treated as the appointed tax representative of a non-resident taxpayer so specified;
  - (f) provision about the circumstances in which a person ceases to be a tax representative and about the withdrawal by the Commissioners of their approval of a tax representative;
  - (g) provision enabling a tax representative to act on behalf of the person for whom he is the tax representative through an agent of the representative;
  - (h) provision for the purposes of any provision made by virtue of paragraphs (a) to (g) above regulating the procedure to be followed in any case and imposing

- requirements as to the information and other particulars to be provided to the Commissioners;
- (i) provision as to the time at which things done under or for the purposes of the regulations are to take effect.
- (3) Subject to subsection (4) below, a person who—
- (a) becomes subject, in accordance with any regulations under this section, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but
- (b) fails (with or without making the appointment) to make the request as required by the regulations,
- shall be liable to a penalty of £10,000.
- (4) A failure such as is mentioned in subsection (3) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

### **34 Effect of appointment of tax representatives**

- (1) The tax representative of a non-resident taxpayer shall be entitled to act on the non-resident taxpayer's behalf for the purposes of any provision made by or under this Part.
- (2) The tax representative of a non-resident taxpayer shall be under a duty, except to such extent as the Commissioners by regulations otherwise provide, to secure the non-resident taxpayer's compliance with, and discharge of, the obligations and liabilities to which the non-resident taxpayer is subject by virtue of any provision made by or under this Part (including obligations and liabilities arising or incurred before he became the non-resident taxpayer's tax representative).
- (3) A person who is or has been the tax representative of a non-resident taxpayer shall be personally liable—
- (a) in respect of any failure while he is or was the non-resident taxpayer's tax representative to secure compliance with, or the discharge of, any obligation or liability to which subsection (2) above applies, and
- (b) in respect of anything done in the course of, or for purposes connected with, acting on the non-resident taxpayer's behalf,
- as if the obligations and liabilities to which subsection (2) above applies were imposed jointly and severally on the tax representative and the non-resident taxpayer.
- (4) A tax representative shall not be liable by virtue of this section to be registered for the purposes of aggregates levy; but the Commissioners may by regulations—
- (a) require the registration of the names of tax representatives against the names of the non-resident taxpayers of whom they are the representatives;
- (b) make provision for the deletion of the names of persons who cease to be tax representatives.
- (5) A tax representative shall not by virtue of this section be guilty of any offence except in so far as—
- (a) he has consented to, or connived in, the commission of the offence by the non-resident taxpayer;
- (b) the commission of the offence by the non-resident taxpayer is attributable to any neglect on the part of the tax representative; or

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- (c) the offence consists in a contravention by the tax representative of an obligation which, by virtue of this section, is imposed both on the tax representative and on the non-resident taxpayer.

*Other special cases*

**35 Groups of companies etc**

- (1) Schedule 9 to this Act (which provides for two or more bodies corporate to be treated as members of the same group for the purposes of this Part) shall have effect.
- (2) Any aggregates levy with which a body corporate is charged in respect of aggregate subjected to commercial exploitation at a time when the body is a member of a group shall be treated for the purposes of this Part as if it were the representative member for that group (instead of that body) which is charged with the levy.
- (3) All the bodies corporate who are members of a group when any aggregates levy becomes due from the representative member, together with any bodies corporate who become members of the group while any such levy remains unpaid, shall be jointly and severally liable for any aggregates levy due from the representative member.
- (4) Subject to subsections (2) and (3) above, the Commissioners may by regulations make such provision as they consider appropriate about—
  - (a) the person by whom any obligation or liability imposed by or under this Part is to be performed or discharged, and
  - (b) the manner in which it is to be performed or discharged,
 in a case where the person who (apart from the regulations) would be subject to the obligation or liability is one of a number of bodies corporate registered in the name of the representative member for a group.
- (5) References in this section to aggregates levy being or becoming due from the representative member include references to any amounts being or becoming recoverable as if they were aggregates levy due from that member.
- (6) For the purposes of this Part—
  - (a) a body corporate is a member of a group at any time in relation to which it falls to be treated as such a member in accordance with Schedule 9 to this Act; and
  - (b) the body corporate which is to be taken to be the representative member for a group at any time is the member of the group which in relation to that time is the representative member under that Schedule in the case of that group.

**36 Partnerships and other unincorporated bodies**

- (1) The Commissioners may by regulations make provision for determining by what persons anything required to be done under this Part is to be done where, apart from those regulations, that requirement would fall on—
  - (a) persons carrying on business in partnership; or
  - (b) persons carrying on business together as an unincorporated body;
 but any regulations under this subsection must be construed subject to the following provisions of this section.



- (2) In determining for the purposes of this Part who at any time is the person chargeable with any aggregates levy where the persons responsible for subjecting any aggregate to commercial exploitation are persons carrying on any business—
- (a) in partnership, or
  - (b) as an unincorporated body,
- the firm or body shall be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members.
- (3) Without prejudice to section 36 of the Partnership Act 1890 (c. 39) (rights of persons dealing with firm against apparent members of firm), where—
- (a) persons have been carrying on in partnership any business in the course or furtherance of which any aggregate has been subjected to commercial exploitation, and
  - (b) a person ceases to be a member of the firm,
- that person shall be regarded for the purposes of this Part (including subsection (7) below) as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners.
- (4) Where a person ceases to be a member of a firm during an accounting period (or is treated as so ceasing by virtue of subsection (3) above) any notice, whether of assessment or otherwise, which—
- (a) is served on the firm under or for the purposes of any provision made by or under this Part, and
  - (b) relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm,
- shall be treated as served also on him.
- (5) Without prejudice to section 16 of the Partnership Act 1890 (c. 39) (notice to acting partner to be notice to the firm), any notice, whether of assessment or otherwise, which—
- (a) is addressed to a firm by the name in which it is registered, and
  - (b) is served in accordance with this Part,
- shall be treated for the purposes of this Part as served on the firm and, accordingly, where subsection (4) above applies, as served also on the former partner.
- (6) Subject to subsection (7) below, nothing in this section shall affect the extent to which, under section 9 of the Partnership Act 1890 (liability of partners for debts of the firm), a partner is liable for aggregates levy owed by the firm.
- (7) Where a person is a partner in a firm during part only of an accounting period, his personal liability for aggregates levy incurred by the firm in respect of aggregate subjected to commercial exploitation in that period shall include, but shall not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances.

### **37 Insolvency etc**

- (1) The Commissioners may by regulations make provision in accordance with the following provisions of this section for the application of this Part in cases in which an insolvency procedure is applied to a person or to a deceased person's estate.

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- (2) The provision that may be contained in regulations under this section may include any or all of the following—
- (a) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter;
  - (b) provision requiring a person to be treated, to the prescribed extent, as if, for the purposes of this Part or such of its provisions as may be prescribed, he were the same person as the subject of the procedure; and
  - (c) provision for securing continuity in the application of any of the provisions of this Part where, by virtue of any regulations under this section, any person is treated as if he were the same person as the subject of the procedure.
- (3) In subsection (2) above “relevant matter”, in relation to a case in which an insolvency procedure is applied to any person or estate, means—
- (a) the application of that procedure to that person or estate;
  - (b) the appointment of any person for the purposes of the application of that procedure;
  - (c) any other matter relating to—
    - (i) the application of that procedure to the subject of the procedure or to his estate;
    - (ii) the holding of an appointment made for the purposes of that procedure; or
    - (iii) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment.
- (4) Regulations made by virtue of subsection (2)(b) above may include provision for a person to cease, on the occurrence of such an event as may be prescribed, to be treated as if he were the same person as the subject of the procedure.
- (5) Regulations under this section prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations.
- (6) Regulations under this section may provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the subject of the procedure may be determined by reference to a notice given in accordance with the regulations to the person so treated.
- (7) For the purposes of this section, an insolvency procedure is applied to a person if—
- (a) a bankruptcy order, winding-up order or administration order is made in relation to that person or a partnership of which he is a member;
  - (b) an award of sequestration is made in relation to that person’s estate or the estate of a partnership of which he is a member;
  - (c) that person is put into administrative receivership;
  - (d) that person passes a resolution for voluntary winding up;
  - (e) any voluntary arrangement approved in accordance with—
    - (i) Part 1 or 8 of the Insolvency Act 1986 (c. 45), or
    - (ii) Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

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- comes into force in relation to that person or a partnership of which that person is a member;
- (f) a deed of arrangement registered in accordance with—
    - (i) the Deeds of Arrangement Act 1914 (c. 47), or
    - (ii) Chapter I of Part VIII of that Order,takes effect in relation to that person;
  - (g) a person is appointed as the receiver or manager of some or all of that person's property, or of income arising from some or all of his property;
  - (h) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the [Insolvency \(Northern Ireland\) Order 1989 \(S.I. 1989/ 2405 \(N.I. 19\)\)](#);
  - (i) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;
  - (j) an interim order is made under Part 8 of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or
  - (k) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).
- (8) For the purposes of this section, an insolvency procedure is applied to a deceased person's estate if—
- (a) after that person's death—
    - (i) a bankruptcy order, or
    - (ii) an order with corresponding effect but a different name,is made in relation to that person's estate under any of the provisions of the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19) ) as they are applied to the administration of the insolvent estates of deceased persons; or
  - (b) an award of sequestration is made on that person's estate after his death.
- (9) In subsection (7) above—
- (a) the reference to any administration order is a reference to an administration order under section 8 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;
  - (b) the reference to a person being put into administrative receivership is a reference to the appointment in relation to him of an administrative receiver, within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989; and
  - (c) references to a member of a partnership include references to any person who is liable as a partner under section 14 of the Partnership Act 1890 (c. 39) (persons liable by "holding out").
- (10) In this section "the subject of the procedure", in relation to the application of any insolvency procedure, means the person to whom, or to whose estate, the procedure is applied.

**38 Death and incapacity**

- (1) The Commissioners may, in accordance with subsection (2) below, by regulations make provision for the purposes of aggregates levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.
- (2) The provisions that may be contained in regulations under this section are—
  - (a) provision requiring the person who is carrying on the business to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
  - (b) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and
  - (c) such other provision as the Commissioners think fit for securing continuity in the application of this Part where a person is so treated.

**39 Transfer of a business as a going concern**

- (1) The Commissioners may by regulations make provision for securing continuity in the application of this Part in cases where any business carried on by a person is transferred to another person as a going concern.
- (2) Regulations under this section may, in particular, include any or all of the following—
  - (a) provision requiring the transferor to inform the Commissioners of the transfer;
  - (b) provision for liabilities and duties under this Part of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;
  - (c) provision for any right of either of them to a tax credit or repayment of aggregates levy to be satisfied by allowing the credit or making the repayment to the other;
  - (d) provision as to the preservation of any records or accounts relating to the business which, by virtue of any regulations under paragraph 2 of Schedule 7 to this Act, are required to be preserved for any period after the transfer.
- (3) Regulations under this section may provide that no such provision as is mentioned in paragraph (b) or (c) of subsection (2) above shall have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations.

*Review and appeal***40 Review of Commissioners' decisions**

- (1) This section applies to any decision of the Commissioners 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 reviewable 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;
  - (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 any assessment under this Part.
- (2) Any person who is or will be affected by any decision to which this section applies may by notice in writing to the Commissioners require them to review the decision.
- (3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of an assessment containing or giving effect to the decision, was first given to the person requiring the review.
- (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- (a) requests such a notification;
  - (b) has not previously been given written notification of that decision; and
  - (c) if given such a notification, will be entitled to require a review of the decision under this section.
- (5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

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- (6) Where the Commissioners are required by a notice under this section to review any decision, it shall be their duty to do so.
- (7) On a review under this section the Commissioners may (subject to subsection (9) below) withdraw, vary or confirm the decision reviewed.
- (8) Where—
  - (a) it is the duty under this section of the Commissioners to review any decision, and
  - (b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review,
 they shall be deemed to have confirmed the decision.
- (9) Where the Commissioners decide, on a review under this section, that a liability to a penalty or to an amount of interest arises, they shall not be entitled to modify the amount payable in respect of that liability except—
  - (a) in exercise of a power conferred by section 46(1) below (penalties) or paragraph 10(3) of Schedule 5 to this Act, paragraph 6(6) of Schedule 8 to this Act or paragraph 5(5) 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.
- (10) This section has effect subject to paragraph 8(5) of Schedule 6 to this Act.

#### **41 Appeals against reviewed decisions**

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions—
  - (a) any decision by the Commissioners on a review under section 40 above (including a deemed confirmation under subsection (8) of that section);
  - (b) any decision by the Commissioners on any such review of a decision referred to in section 40(1) above as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 40(3) above.
- (2) Where an appeal under this section relates to a decision (whether or not contained in an assessment) that an amount of aggregates levy is due from any person, that appeal shall not be entertained unless—
  - (a) the amount which the Commissioners have determined to be due has been paid or deposited with them; or
  - (b) on being satisfied that the appellant would otherwise suffer hardship—
    - (i) the Commissioners agree, or
    - (ii) the tribunal decide,
 that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- (3) On an appeal under this section relating to a penalty under paragraph 7 of Schedule 6 to this Act (evasion), the burden of proof as to the matters specified in paragraphs (a) to (c) of sub-paragraph (1) of that paragraph shall lie upon the Commissioners.

## **42 Determinations on appeal**

- (1) Where, on an appeal under section 41 above—
  - (a) it is found that an assessment of the appellant made, confirmed or treated as confirmed by the Commissioners on a review under section 40 above (“the original assessment”) 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 41 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, a further review of the original decision.
- (3) Where, on an appeal under section 41 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 41 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 at such rate as the tribunal may determine.
- (5) Where, on an appeal under section 41 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 at such rate as the tribunal may determine.
- (6) Where—
  - (a) an appeal under section 41 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,  
the tribunal may, if they think fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (7) Sections 85 and 87 of the Value Added Tax Act 1994 (c. 23) (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if—

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- (a) the references to section 83 of that Act included references to section 41 above; and
- (b) the references to value added tax included references to aggregates levy.

#### **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.

#### *General provisions*

#### **44 Destination of receipts**

All money and securities for money collected or received for or on account of aggregates levy shall—

- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979 (c. 2); and
- (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

#### **45 Regulations and orders**

- (1) The powers of the Commissioners under this Part to make regulations shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.



- (2) Where regulations made under this Part impose a relevant requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable, subject to subsection (3) below, to a penalty of £250.
- (3) Where by reason of any conduct—
  - (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 7 of Schedule 6 to this Act,that person shall not by reason of that conduct be liable also to a penalty under any regulations under this Part.
- (4) In subsection (2) above “relevant requirement” means any requirement other than one the penalty for a contravention of which is specified in section 25(3) or 33(3) above or in paragraph 2 of Schedule 7 to this Act.
- (5) Subject to subsection (6) below, a power under this Part to make any provision by order or regulations—
  - (a) may be exercised so as to apply the provision only in such cases as may be described in the order or regulations;
  - (b) may be exercised so as to make different provision for different cases or descriptions of case; and
  - (c) shall include power by the order or regulations to make such supplementary, incidental, consequential or transitional provision as the Treasury or, as the case may be, the Commissioners may think fit.
- (6) Subsection (5) above does not apply to an order under section 16(6) or 24(10) above.

#### **46 Civil penalties**

- (1) Where a person is liable to a civil penalty imposed by or under this Part—
  - (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; but
  - (b) on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners' reduction.
- (2) In determining whether a civil penalty should be, or should have been, reduced under subsection (1) above, no account shall be taken of any of the following matters, that is to say—
  - (a) the insufficiency of the funds available to any person for paying any aggregates levy due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of aggregates levy;
  - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.
- (3) For the purposes of any provision made by or under this Part under which liability to a civil penalty does not arise in respect of conduct for which there is shown to be a reasonable excuse—
  - (a) an insufficiency of funds available for paying any amount is not a reasonable excuse; and
  - (b) where reliance has been placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Schedule 10 to this Act (which makes provision about the assessment of civil penalties imposed and about interest on such penalties) shall have effect.
- (5) If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty provided for by this Part was fixed, they may by order made by statutory instrument substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to them to be justified by the change.
- (6) In subsection (5) above the reference to the time when the amount of a civil penalty was fixed is a reference—
  - (a) in the case of a penalty which has not previously been modified under that subsection, to the time of the passing of this Act; and
  - (b) in any other case, to the time of the making of the order under that subsection that made the most recent modification of the amount of that penalty.
- (7) An order under subsection (5) above—
  - (a) shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of the House of Commons; and
  - (b) shall not apply to the penalty for any conduct before the coming into force of the order.
- (8) In this section “civil penalty” means any penalty liability to which arises otherwise than in consequence of a person’s conviction for a criminal offence.

#### **47 Service of notices etc**

- (1) Any notice, notification or requirement that is to be or may be served on, given to or imposed on any person for the purposes of any provision made by or under this Part may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or representative at the latest or usual residence or place of business of that person or representative.
- (2) Any direction required or authorised by or under this Part to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business.
- (3) Any direction, notice or notification required or authorised by or under this Part to be given by the Commissioners may be withdrawn or varied by them by a direction, notice or notification given in the same manner as the one withdrawn or varied.

#### **48 Interpretation of Part**

- (1) In this Part—
  - “accounting period” means a period which, in pursuance of any regulations under section 25(1) above, is an accounting period for the purposes of aggregates levy;
  - “aggregate” shall be construed in accordance with sections 17(1) and 18 above;
  - “agreement” includes any arrangement or understanding (whether or not legally enforceable), and cognate expressions shall be construed accordingly;

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*Status: This is the original version (as it was originally enacted).*

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“agricultural” means agricultural within the meaning of the Agriculture Act 1967 (c. 22) or the Agriculture Act (Northern Ireland) 1949 (c. 2 (N.I.));

“appeal tribunal” means a VAT and duties tribunal;

“the commencement date” has the meaning given by section 16(6) above;

“commercial exploitation” shall be construed in accordance with section 19 above;

“the Commissioners” means the Commissioners of Customs and Excise;

“conduct” includes acts and omissions;

“construction purposes” shall be construed in accordance with subsection (2) below;

“exempt process” shall be construed in accordance with section 18(2) above;

“forestry” includes the cultivation, maintenance and care of trees or woodland of any description;

“gravel” includes gravel comprising or containing pebbles or stones or both;

“limestone” includes chalk and dolomite;

“member”, in relation to a group, shall be construed in accordance with section 35(6) above;

“mixed” includes blended, and cognate expressions shall be construed accordingly;

“non-resident taxpayer” means a person who—

(a) is or is required to be registered for the purposes of aggregates levy, or would be so required but for an exemption by virtue of regulations under section 24(4) above; and

(b) is not resident in the United Kingdom;

“operate” and “operator”, in relation to any site, shall be construed in accordance with section 21 above;

“originating site” shall be construed in accordance with section 20 above;

“prescribed” means prescribed by regulations made by the Commissioners under this Part;

“registered” means registered in the register maintained under section 24 above;

“representative member”, in relation to a group, shall be construed in accordance with section 35(6) above;

“rock” does not include any rock contained in a quantity of aggregate consisting wholly or mainly of gravel or sand;

“structure” includes roads and paths, the way on which any railway track is or is to be laid and embankments;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30);

“tax credit” means a tax credit for which provision is made by tax credit regulations;

“tax credit regulations” means regulations under section 30 above;

“tax representative”, in relation to any person, means the person who, in accordance with any regulations under section 33 above, is for the time being that person’s tax representative for the purposes of aggregates levy;

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*Status: This is the original version (as it was originally enacted).*

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“taxable aggregate” shall be construed in accordance with section 17(2) to (4) above;

“United Kingdom waters” means—

- (a) the territorial sea adjacent to the United Kingdom; or
- (b) any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29).

- (2) References in this Part to the use of anything for construction purposes are references to either of the following, except in so far as it consists in the application to it of an exempt process, that is to say—
  - (a) using it as material or support in the construction or improvement of any structure;
  - (b) mixing it with anything as part of the process of producing mortar, concrete, tarmacadam, coated roadstone or any similar construction material.
- (3) References in this Part to winning any aggregate are references to winning it—
  - (a) by quarrying, dredging, mining or collecting it from any land or area of the seabed; or
  - (b) by separating it in any other manner from any land or area of the seabed in which it is comprised.
- (4) References in this Part, in relation to any accounting period, to aggregates levy due from any person for that period are references (subject to any regulations made by virtue of section 25(2)(a) above) to the aggregates levy for which that person is required, in accordance with regulations under section 25 above, to account by reference to that period.
- (5) References in this Part to a repayment of aggregates levy or of an amount of aggregates levy are references to any repayment of an amount to any person by virtue of—
  - (a) any tax credit regulations;
  - (b) section 31 above;
  - (c) paragraph 11(3) of Schedule 5 to this Act; or
  - (d) paragraph 6(3) of Schedule 10 to this Act.
- (6) For the purposes of this Part a person is resident in the United Kingdom at any time if, at that time—
  - (a) that person has an established place of business in the United Kingdom;
  - (b) that person has a usual place of residence in the United Kingdom; or
  - (c) that person is a firm or unincorporated body which (without being resident in the United Kingdom by virtue of paragraph (a) above) has amongst its partners or members at least one individual with a usual place of residence in the United Kingdom.

### *Supplemental*

#### **49 Minor and consequential amendments**

- (1) In section 1(1) of the Provisional Collection of Taxes Act 1968 (c. 2) (taxes in relation to which resolutions may have temporary statutory effect), after “landfill tax,” there shall be inserted “aggregates levy,”.

(2) In section 197(2) of the Finance Act 1996 (c. 8) (enactments for which interest rates are set under section 197), after paragraph (g) there shall be inserted—

“(h) the following provisions of the Finance Act 2001 (interest payable to or by the Commissioners in connection with aggregates levy), that is to say—

- (i) sections 25(2)(f) and 30(3)(f);
- (ii) paragraph 8(3)(a) of Schedule 5; and
- (iii) paragraphs 2 and 6(1)(b) of Schedule 8.”.

(3) In section 827 of the Taxes Act 1988 (no deduction for penalties etc.), the following subsection shall be inserted after subsection (1D)—

“(1E) Where a person is liable to make a payment by way of—

- (a) any penalty under any provision of Part 2 of the Finance Act 2001 (aggregates levy),
- (b) interest under any of paragraphs 5 to 9 of Schedule 5 to that Act (interest on aggregates levy due and on interest),
- (c) interest under paragraph 6 of Schedule 8 to that Act (interest on recoverable overpayments etc.), or
- (d) interest under paragraph 5 of Schedule 10 to that Act (interest on penalties),

the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”.