



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 8

### PENALTIES

#### CHAPTER 1

##### PENALTIES: INTRODUCTORY

###### *Overview*

#### **157 Penalties: overview**

This Part is arranged as follows—

- Chapter 2 sets out penalties relating to failure to make tax returns or to pay tax,
- Chapter 3 sets out penalties relating to inaccuracies,
- Chapter 4 sets out penalties relating to investigations, and
- Chapter 5 sets out other administrative penalties.

###### *Double jeopardy*

#### **158 Double jeopardy**

A person is not liable to a penalty under this Act in respect of anything in respect of which the person has been convicted of an offence.

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## CHAPTER 2

### PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

#### *Penalties for failure to make returns*

#### **159 Penalty for failure to make returns**

- (1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 82).

|    | <i>Tax to which return relates</i> | <i>Return</i>   |
|----|------------------------------------|---|
| 1. | Land and buildings transaction tax | (a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.<br>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013. |
| 2. | Scottish landfill tax              | Return under regulations made under section 25 of the LT(S) Act 2014.   |

- (2) If P’s failure falls within more than one provision of this section or of sections 160 to 167, P is liable to a penalty under each of those provisions.
- (3) But where P is liable for a penalty under more than one provision of this section or of sections 160 to 167 which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.
- (4) In sections 160 to 167 “penalty date”, in relation to a return, means the day after the filing date.
- (5) Sections 160 to 163 apply in the case of a return falling within item 1 of the table.
- (6) Sections 164 to 167 apply in the case of a return falling within item 2 of the table.

#### *Amounts of penalties for failure to make returns: LBTT*

#### **160 Land and buildings transaction tax: first penalty for failure to make return**

- (1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 159.
- (2) P is liable to a penalty under this section of £100.

#### **161 Land and buildings transaction tax: 3 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if)—
- (a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,

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- (b) Revenue Scotland decides that such a penalty should be payable, and
  - (c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).
- (3) The date specified in the notice under subsection (1)(c)—
- (a) may be earlier than the date on which the notice is given, but
  - (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

**162 Land and buildings transaction tax: 6 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

**163 Land and buildings transaction tax: 12 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P's liability to tax, the penalty under this section is the greater of—
- (a) 100% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- (3) In any case not falling within subsection (2), the penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

*Amounts of penalties for failure to make returns: Scottish landfill tax*

**164 Scottish landfill tax: first penalty for failure to make return**

- (1) This section applies in the case of a failure to make a return falling within item 2 of the table in section 159.
- (2) P is liable to a penalty under this section of £100.
- (3) In addition, a penalty period begins to run on the penalty date for the return.

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- (4) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under section 165(2)(c).

**165 Scottish landfill tax: multiple failures to make return**

- (1) This section applies if—
- (a) a penalty period has begun under section 164 because P has failed to make a return (“return A”), and
  - (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the table as return A.
- (2) In such a case—
- (a) section 164(2) and (3) do not apply to the failure to make return B,
  - (b) P is liable to a penalty under this section for that failure, and
  - (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.
- (3) The amount of the penalty under this section is determined by reference to the number of returns that P has failed to make during the penalty period.
- (4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.
- (5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.
- (6) If the failure to make return B is P’s third or subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.
- (7) For the purposes of this section, in accordance with subsection (1)(b), the references in subsections (3) to (6) to a return are references to a return falling within the same item in the table as returns A and B.
- (8) A penalty period may be extended more than once under subsection (2)(c).

**166 Scottish landfill tax: 6 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

**167 Scottish landfill tax: 12 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—

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- (a) 100% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- (3) In any case not falling within subsection (2), the penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

*Penalties for failure to pay tax*

**168 Penalty for failure to pay tax**

- (1) A penalty is payable by a person (“P”) where P fails to pay an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.

|    | <i>Tax to which payment relates</i> | <i>Amount of tax payable</i>   | <i>Date after which penalty incurred</i>   |
|----|-------------------------------------|--|--|
| 1. | Land and buildings transaction tax  | <ul style="list-style-type: none"> <li>(a) Amount payable under section 40 of the LBTT(S) Act 2013.</li> <li>(b) Additional amount payable as a result of an adjustment under section 66 of this Act.</li> <li>(c) Additional amount payable as a result of an amendment under section 83 of this Act.</li> <li>(d) Additional amount payable as a result of an amendment under section 87 of this Act.</li> <li>(e) Additional amount payable as a result of an amendment under section 93 of this Act.</li> <li>(f) Amount assessed under section 95 of</li> </ul> | <ul style="list-style-type: none"> <li>(a), (d) and (f) The date falling 30 days after the date by which the amount must be paid.</li> <li>(b), (c), (e) and (g) The date by which the amount must be paid.</li> </ul> |

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| <i>Tax to which<br/>payment relates</i> | <i>Amount of<br/>tax payable</i>   | <i>Date after which<br/>penalty incurred</i>  |
|---|--|---|
|   | <p>this Act in the absence of a return.</p> <p>(g) Amount payable as a result of an assessment under section 98 of this Act.</p>   |   |
| 2. Scottish landfill tax                | <p>(a) Amount payable under regulations made under section 25 of the LT(S) Act 2014.</p> <p>(b) Additional amount payable as a result of an adjustment under section 66 of this Act.</p> <p>(c) Additional amount payable as a result of an amendment under section 83 of this Act.</p> <p>(d) Additional amount payable as a result of an amendment under section 87 of this Act.</p> <p>(e) Additional amount payable as a result of an amendment under section 93 of this Act.</p> <p>(f) Amount assessed under section 95 of this Act in the absence of a return.</p> <p>(g) Amount payable as a result of an assessment under section 98 of this Act.</p> | <p>(a), (b), (c), (e) and (g) The date by which the amount must be paid.</p> <p>(d) and (f) The date falling 30 days after the date by which the amount must be paid.</p> |

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- (2) If P’s failure falls within more than one provision of this section or of sections 169 to 173, P is liable to a penalty under each of those provisions.
- (3) In sections 169 to 173 “penalty date”, in relation to an amount of tax, means the day after the date mentioned in or for the purposes of column 4 of the table in relation to that amount.
- (4) Section 169 applies in the case of a payment falling within item 1 of the table.
- (5) Sections 170 to 173 apply in the case of a payment falling within item 2 of the table.

*Amounts of penalties for failure to pay tax: LBTT*

**169 Land and buildings transaction tax: amounts of penalties for failure to pay tax**

- (1) This section applies in the case of a payment of tax falling within item 1 of the table in section 168.
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Amounts of penalties for failure to pay tax: Scottish landfill tax*

**170 Scottish landfill tax: first penalty for failure to pay tax**

- (1) This section applies in the case of a payment of tax falling within item 2 of the table in section 168.
- (2) P is liable to a penalty of 1% of the unpaid tax.
- (3) In addition, a penalty period begins to run on the penalty date for the payment of tax.
- (4) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 of the table in section 168 for the payment, unless it is extended under section 171(2)(c).

**171 Scottish landfill tax: penalties for multiple failures to pay tax**

- (1) This section applies if—
  - (a) a penalty period has begun under section 170 because P has failed to make a payment (“payment A”), and
  - (b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the table in section 168 as payment A.
- (2) In such a case—
  - (a) section 170(2) and (3) do not apply to the failure to make payment B,
  - (b) P is liable to a penalty under this section for that failure, and

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- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.
- (3) The amount of the penalty under this section is determined by reference to the number of defaults that P has made during the penalty period.
- (4) If the default is P's first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.
- (5) If the default is P's second default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.
- (6) If the default is P's third or subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.
- (7) For the purposes of this section—
  - (a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable,
  - (b) in accordance with subsection (1)(b), the references in subsections (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate,
  - (c) a default counts for the purposes of those subsections if (but only if) the period to which the payment relates is less than 6 months,
  - (d) the amount of a default is the amount which P fails to pay.
- (8) A penalty period may be extended more than once under subsection (2)(c).

**172 Scottish landfill tax: 6 month penalty for failure to pay tax**

If any amount of tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

**173 Scottish landfill tax: 12 month penalty for failure to pay tax**

If any amount of tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Penalties under Chapter 2: general*

**174 Interaction of penalties under Chapter 2 with other penalties**

Where P is liable to a penalty under this Chapter which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P (other than a penalty under this Chapter or section 209), if the amount of the penalty is determined by reference to the same liability to tax.

**175 Reduction in penalty under sections 159 to 167 for disclosure**

- (1) Revenue Scotland may reduce a penalty under sections 159 to 167 where P discloses information which has been withheld by a failure to make a return (“relevant information”).



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- (2) P discloses relevant information by—
  - (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
  - (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.
- (3) Reductions under this section may reflect—
  - (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (4) Disclosure of relevant information—
  - (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
  - (b) otherwise, is “prompted”.
- (5) In relation to disclosure, “quality” includes timing, nature and extent.

**176 Suspension of penalty under sections 168 to 173 during currency of agreement for deferred payment**

- (1) This section applies if—
  - (a) P fails to pay an amount of tax when it becomes due and payable,
  - (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
  - (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).
- (2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under sections 168 to 173 for failing to pay that amount, P is not liable to that penalty.
- (3) But if—
  - (a) P breaks the agreement, and
  - (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),P becomes liable to that penalty at the date of the notice.
- (4) P breaks an agreement if—
  - (a) P fails to pay the amount of tax in question when the deferral period ends, or
  - (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.
- (5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

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### **177 Special reduction in penalty under Chapter 2**

- (1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) “special circumstances” does not include—
  - (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
  - (a) remitting a penalty entirely,
  - (b) suspending a penalty, and
  - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

### **178 Reasonable excuse for failure to make return or pay tax**

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.
- (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.
- (3) For the purposes of subsections (1) and (2)—
  - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

### **179 Assessment of penalties under Chapter 2**

- (1) Where P becomes liable to a penalty under this Chapter, Revenue Scotland must—
  - (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.
- (2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty under this Chapter—
  - (a) is to be treated for enforcement purposes as an assessment to tax, and

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- (b) may be combined with an assessment to tax.
- (4) In relation to penalties under sections 159 to 167—
  - (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
  - (b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.
- (5) In relation to penalties under sections 168 to 173—
  - (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,
  - (b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.
- (6) An amendment made under subsection (5)(b)—
  - (a) does not affect when the penalty must be paid,
  - (b) may be made after the last day on which the assessment in question could have been made under section 180.

## **180 Time limit for assessment of penalties under Chapter 2**

- (1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with—
  - (a) in the case of failure to make a return, the filing date, or
  - (b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.
- (3) Date B is the last day of the period of 12 months beginning with—
  - (a) in the case of failure to make a return—
    - (i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
    - (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or
  - (b) in the case of failure to pay tax—
    - (i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
    - (ii) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.

**181 Power to change penalty provisions in Chapter 2**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,
  - (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

**CHAPTER 3**

## PENALTIES RELATING TO INACCURACIES

*Penalties for inaccuracies in taxpayer documents***182 Penalty for inaccuracy in taxpayer document**

- (1) A penalty is payable by a person (“P”) where—
  - (a) P gives Revenue Scotland a document of a kind mentioned in the table below, and
  - (b) conditions A and B below are met.
- (2) Condition A is that the document contains an inaccuracy which amounts to, or leads to—
  - (a) an understatement of a liability to tax,
  - (b) a false or inflated statement of a loss, exemption or relief, or
  - (c) a false or inflated claim for relief or to repayment of tax.
- (3) Condition B is that the inaccuracy was—
  - (a) deliberate on P’s part (“a deliberate inaccuracy”), or
  - (b) careless on P’s part (“a careless inaccuracy”).
- (4) An inaccuracy is careless if it is due to a failure by P to take reasonable care.
- (5) An inaccuracy in a document given by P to Revenue Scotland, which was neither deliberate nor careless on P’s part when the document was given, is to be treated as careless if P—
  - (a) discovered the inaccuracy at some later time, and
  - (b) did not take reasonable steps to inform Revenue Scotland.
- (6) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

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|    | <i>Tax</i>                         | <i>Document</i>  |
|----|------------------------------------|--|
| 1. | Land and buildings transaction tax | (a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.<br>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.<br>(c) Application under section 41 of the LBTT(S) Act 2013.<br>(d) Amended return under section 83 of this Act.<br>(e) Claim under section 106, 107 or 108 of this Act. |
| 2. | Scottish landfill tax              | (a) Return under regulations made under section 25 of the LT(S) Act 2014.<br>(b) Amended return under section 83 of this Act.<br>(c) Claim under section 106, 107 or 108 of this Act.  |

(7) Section 183 applies in the case of a document falling within item 1 or 2 of the table.

### **183 Amount of penalty for inaccuracy in taxpayer document**

- (1) This section sets out the penalty payable under section 182.
- (2) For a deliberate inaccuracy, the penalty is 100% of the potential lost revenue.
- (3) For a careless inaccuracy, the penalty is 30% of the potential lost revenue.
- (4) In this section and sections 185 and 186 “potential lost revenue” has the meaning given in sections 187 to 190.

### **184 Suspension of penalty for careless inaccuracy under section 182**

- (1) Revenue Scotland may suspend all or part of a penalty for a careless inaccuracy under section 182 by notice to P.
- (2) A notice must specify—
  - (a) what part of the penalty is to be suspended,
  - (b) a period of suspension not exceeding 2 years, and
  - (c) conditions of suspension to be complied with by P.
- (3) Revenue Scotland may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under section 182 for careless inaccuracy.

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- (4) A condition of suspension may specify—
  - (a) action to be taken,
  - (b) a period within which it may be taken.
- (5) On the expiry of the period of suspension—
  - (a) if P satisfies Revenue Scotland that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
  - (b) otherwise, the suspended penalty or part becomes payable.
- (6) If, during the period of suspension of all or part of a penalty under section 182, P becomes liable for another penalty under that section, the suspended penalty or part becomes payable.

*Penalty for inaccuracy attributable to another person*

**185 Penalty for inaccuracy in taxpayer document attributable to another person**

- (1) A penalty is payable by a person (“T”) where—
  - (a) another person (“P”) gives Revenue Scotland a document of a kind mentioned in the table in section 182,
  - (b) the document contains a relevant inaccuracy, and
  - (c) the inaccuracy was attributable—
    - (i) to T deliberately supplying false information to P (whether directly or indirectly), or
    - (ii) to T deliberately withholding information from P,
 with the intention of the document containing the inaccuracy.
- (2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—
  - (a) an understatement of a liability to tax,
  - (b) a false or inflated statement of a loss, exemption or relief, or
  - (c) a false or inflated claim for relief or to repayment of tax.
- (3) A penalty is payable by T under this section in respect of an inaccuracy whether or not P is liable to a penalty under section 182 in respect of the same inaccuracy.
- (4) The penalty payable under this section is 100% of the potential lost revenue.

*Penalty for failure to notify under-assessment*

**186 Penalty for failure to notify under-assessment**

- (1) A penalty is payable by a person (“P”) where—
  - (a) a Revenue Scotland assessment understates P’s liability to a devolved tax, and
  - (b) P has failed to take reasonable steps to notify Revenue Scotland, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable, Revenue Scotland must consider—
  - (a) whether P knew, or should have known, about the under-assessment, and
  - (b) what steps it would have been reasonable to take to notify Revenue Scotland.

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- (3) The penalty payable under this section is 30% of the potential lost revenue.
- (4) In this section—
  - (a) “Revenue Scotland assessment” includes “Revenue Scotland determination”, and
  - (b) accordingly, references to an under-assessment include an under-determination.

#### *Penalties under Chapter 3: general*

### **187 Potential lost revenue: normal rule**

- (1) The “potential lost revenue” in respect of—
  - (a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or
  - (b) a failure to notify an under-assessment,is the additional amount due and payable in respect of tax as a result of correcting the inaccuracy or under-assessment.
- (2) The reference in subsection (1) to the additional amount due and payable includes a reference to—
  - (a) an amount payable to Revenue Scotland having been erroneously paid by way of repayment of tax, and
  - (b) an amount which would have been repayable by Revenue Scotland had the inaccuracy or assessment not been corrected.

### **188 Potential lost revenue: multiple errors**

- (1) Where P is liable to a penalty under section 182 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section 187 in respect of each inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.
- (2) In calculating potential lost revenue where P is liable to a penalty under section 182 in respect of one or more understatements in one or more documents relating to a tax period, account is to be taken of any overstatement in any document given by P which relates to the same tax period.
- (3) In subsection (2)—
  - (a) “understatement” means an inaccuracy that meets condition A in section 182, and
  - (b) “overstatement” means an inaccuracy that does not meet that condition.
- (4) For the purpose of subsection (2) overstatements are to be set against understatements in the following order—
  - (a) understatements in respect of which P is not liable to a penalty,
  - (b) careless understatements,
  - (c) deliberate understatements.
- (5) In calculating for the purposes of a penalty under section 182 potential lost revenue in respect of a document given by or on behalf of P, no account is to be taken of the

fact that a potential loss of revenue from P is or may be balanced by a potential overpayment by another person (except to the extent than an enactment requires or permits a person's tax liability to be adjusted by reference to P's).

### **189 Potential lost revenue: losses**

- (1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is calculated in accordance with section 187.
- (2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has not been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is—
  - (a) the potential lost revenue calculated in accordance with section 187 in respect of any part of the loss that has been used to reduce the amount due and payable in respect of tax, plus
  - (b) 10% of any part that has not.
- (3) Subsections (1) and (2) apply both—
  - (a) to a case where no loss would have been recorded but for the inaccuracy, and
  - (b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

### **190 Potential lost revenue: delayed tax**

- (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been ("the delayed tax"), the potential lost revenue is—
  - (a) 5% of the delayed tax for each year of the delay, or
  - (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.
- (2) This section does not apply to a case to which section 189 applies.

### **191 Special reduction in penalty under this Chapter**

- (1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) "special circumstances" does not include—
  - (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
  - (a) remitting a penalty entirely,
  - (b) suspending a penalty, and
  - (c) agreeing a compromise in relation to proceedings for a penalty.



- (4) In this section references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

## **192 Reduction in penalty under this Chapter for disclosure**

- (1) Revenue Scotland may reduce a penalty under this Chapter where a person makes a qualifying disclosure.
- (2) A “qualifying disclosure” means disclosure of—
  - (a) an inaccuracy,
  - (b) a supply of false information or withholding of information, or
  - (c) a failure to disclose an under-assessment.
- (3) A person makes a qualifying disclosure by—
  - (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
  - (c) allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.
- (4) Reductions under this section may reflect—
  - (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (5) Disclosure of relevant information—
  - (a) is “unprompted” if made at a time when the person making it has no reason to believe that Revenue Scotland has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
  - (b) otherwise, is “prompted”.
- (6) In relation to disclosure, “quality” includes timing, nature and extent.

## **193 Assessment of penalties under this Chapter**

- (1) Where a person becomes liable to a penalty under this Chapter, Revenue Scotland must—
  - (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty under this Chapter—
  - (a) is to be treated for enforcement purposes as an assessment to tax, and
  - (b) may be combined with an assessment to tax.

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- (4) An assessment of a penalty under section 182 or 185 must be made before the end of the period of 12 months beginning with—
  - (a) the end of the appeal period for the decision correcting the inaccuracy, or
  - (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.
- (5) An assessment of a penalty under section 186 must be made before the end of the period of 12 months beginning with—
  - (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
  - (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.
- (6) In subsections (4) and (5) “appeal period” means the period during which—
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

#### **194 Power to change penalty provisions in Chapter 3**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,
  - (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to—
  - (a) a failure which began before the date on which the regulations come into force, and
  - (b) an inaccuracy in any information or document provided to Revenue Scotland before that date.

## CHAPTER 4

### PENALTIES RELATING TO INVESTIGATIONS

#### *Penalties for failure to comply or obstruction*

#### **195 Penalties for failure to comply or obstruction**

- (1) This section applies to a person who—
  - (a) fails to comply with an information notice, or
  - (b) deliberately obstructs a designated officer or a person authorised by the officer in the course of an inspection or in the exercise of a power that has been approved by the tribunal under section 147.
- (2) The person is liable to a penalty of £300.
- (3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 198 or 199.

#### **196 Daily default penalties for failure to comply or obstruction**

- (1) This section applies if the failure or obstruction mentioned in section 195(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.
- (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

#### *Penalties for inaccurate information or documents*

#### **197 Penalties for inaccurate information or documents**

- (1) This section applies if—
  - (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform Revenue Scotland at that time.
- (5) Condition C is that the person—
  - (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform Revenue Scotland.
- (6) The person is liable to a penalty not exceeding £3,000.
- (7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

*Penalties for concealing, destroying etc. documents*

**198 Concealing, destroying etc. documents following information notice**

- (1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.
- (2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Subsection (1) does not apply, in a case to which section 133 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, a designated officer made a request for the original document under section 133(2)(b).

**199 Concealing, destroying etc. documents following information notification**

- (1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if a designated officer has notified the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.
- (2) Subsection (1) does not apply if the person acts after—
  - (a) at least 6 months has expired since the person was (or was last) so notified, or
  - (b) an information notice has been given to the person requiring the document to be produced.

*Penalties: failure to comply with time limit*

**200 Failure to comply with time limit**

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 195 or 196 if the person did it within such further time (if any) as a designated officer may have allowed.

*Penalties under Chapter 4: general*

**201 Reasonable excuse for failure to comply or obstruction**

- (1) Liability to a penalty under section 195 or 196 does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure or the obstruction of a designated officer or of a person authorised by the officer.
- (2) For the purposes of this section—
  - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,

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- (b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
- (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

## **202 Assessment of penalties under sections 195, 196 and 197**

- (1) Where a person becomes liable for a penalty under section 195, 196 or 197 Revenue Scotland must—
  - (a) assess the penalty, and
  - (b) notify the person.
- (2) An assessment of a penalty under section 195 or 196 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsection (3).
- (3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 195 or 196 must be made within the period of 12 months beginning with the latest of the following—
  - (a) the date on which the person became liable to the penalty,
  - (b) the end of the period in which notice of an appeal against the information notice could have been given, and
  - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under section 197 must be made—
  - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of a designated officer, and
  - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

## **203 Enforcement of penalties under sections 195, 196 and 197**

- (1) A penalty under section 195, 196 or 197 must be paid—
  - (a) before the end of the period of 30 days beginning with the date on which the notification under section 202 was issued,
  - (b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
  - (c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
  - (d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under section 195, 196 or 197 is to be treated for enforcement purposes as an assessment to tax.

**204 Increased daily default penalty**

- (1) This section applies if—
  - (a) a penalty under section 196 is assessed under section 202 in respect of a person’s failure to comply with a notice under section 127,
  - (b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and
  - (c) the person has been told that an application may be made under this section for an increased daily penalty to be imposed.
- (2) If this section applies, a designated officer may make an application to the tribunal for an increased daily penalty to be imposed on the person.
- (3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day on which the failure continues—
  - (a) the person is not liable to a penalty under section 196 for the failure, and
  - (b) the person is liable instead to a penalty under this section of an amount determined by the tribunal.
- (4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.
- (5) In determining the amount the tribunal must have regard to—
  - (a) the likely cost to the person of complying with the notice,
  - (b) any benefits to the person of not complying with it, and
  - (c) any benefits to anyone else resulting from the person’s non-compliance.
- (6) If a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.
- (7) The notification must specify the day from which the increased penalty is to apply.
- (8) That day and any subsequent day is an “applicable day” for the purposes of subsection (3).

**205 Enforcement of increased daily default penalty**

- (1) A penalty under section 204 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under section 204 is to be treated for enforcement purposes as an assessment to tax.

**206 Tax-related penalty**

- (1) This section applies where—
  - (a) a person becomes liable to a penalty under section 195,
  - (b) the failure or obstruction continues after a penalty is imposed under that section,
  - (c) a designated officer has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,

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- (d) before the end of the period of 12 months beginning with the relevant date, a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
  - (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.
- (2) The person is liable to a penalty of an amount decided by the Upper Tribunal.
- (3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
- (4) Where a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.
- (5) Any penalty under this section is in addition to the penalty or penalties under section 195 or 196.
- (6) In subsection (1)(d) the “relevant date” means—
- (a) in a case involving an information notice against which a person may appeal, the latest of—
    - (i) the date on which the person became liable to the penalty under section 195,
    - (ii) the end of the period in which notice of an appeal against the information notice could have been given, and
    - (iii) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn, and
  - (b) in any other case, the date on which the person became liable to the penalty under section 195.

## **207 Enforcement of tax-related penalty**

- (1) A penalty under section 206 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under section 206 is to be treated for enforcement purposes as an assessment to tax.

## **208 Power to change penalty provisions in Chapter 4**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter (other than penalties under section 206).
- (2) Regulations under subsection (1) may include provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,
  - (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may also include provision for the purposes of sections 151(6) and (7) and 231(2) and (3).
- (4) Regulations under subsection (1) may not create criminal offences.

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- (5) Regulations under subsection (1) may modify any enactment (including this Act).
- (6) Regulations under subsection (1) do not apply to a failure or obstruction which began before the date on which the regulations come into force.

## CHAPTER 5

### OTHER ADMINISTRATIVE PENALTIES

#### *Penalties for failure to register for tax etc.*

#### **209 Penalty for failure to register for tax etc.**

- (1) A penalty is payable by a person (“P”) where—
  - (a) P fails to comply with a requirement imposed by or under section 22 or 23 of the LT(S) Act 2014 (“a relevant requirement”), and
  - (b) the failure was—
    - (i) deliberate on P’s part (“a deliberate failure”), or
    - (ii) careless on P’s part (“a careless failure”).
- (2) A failure is careless if it is due to a failure by P to take reasonable care.
- (3) A failure by P to comply with a relevant requirement, which was neither deliberate nor careless on P’s part at an earlier time, is to be treated as careless if P—
  - (a) discovered the failure at some later time, and
  - (b) did not take reasonable steps to inform Revenue Scotland.
- (4) Section 210 sets out the penalty under this section.

#### **210 Amount of penalty for failure to register for tax etc.**

- (1) This section sets out the penalty payable under section 209.
- (2) For a deliberate failure, the penalty is 100% of the potential lost revenue.
- (3) For a careless failure, the penalty is 30% of the potential lost revenue.
- (4) In the case of a relevant requirement relating to Scottish landfill tax, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—
  - (a) beginning on the date with effect from which P is required in accordance with that requirement to be registered, and
  - (b) ending on the date on which Revenue Scotland received notification of, or otherwise became fully aware of, P’s liability to be registered.
- (5) In calculating potential lost revenue in respect of a failure to comply with a relevant requirement on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person.



*Penalties under Chapter 5: general*

**211 Interaction of penalties under section 209 with other penalties**

The amount of a penalty for which P is liable under section 209 is to be reduced by the amount of any other penalty incurred by P (other than a penalty under Chapter 2), if the amount of the penalty is determined by reference to the same liability to tax.

**212 Reduction in penalty under section 209 for disclosure**

- (1) Revenue Scotland may reduce a penalty under section 209 where P discloses a failure to comply with a relevant requirement (“a relevant failure”).
- (2) P discloses a relevant failure by—
  - (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of it, and
  - (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.
- (3) Reductions under this section may reflect—
  - (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (4) Disclosure of a relevant failure—
  - (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the failure, and
  - (b) otherwise, is “prompted”.
- (5) In relation to disclosure, “quality” includes timing, nature and extent.

**213 Special reduction in penalty under section 209**

- (1) Revenue Scotland may reduce a penalty under section 209 if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) “special circumstances” does not include—
  - (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
  - (a) remitting a penalty entirely,
  - (b) suspending a penalty, and
  - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

**214 Reasonable excuse for failure to register for tax etc.**

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with a relevant requirement, liability to a penalty under section 209 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
  - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**215 Assessment of penalties under section 209**

- (1) Where P becomes liable to a penalty under section 209, Revenue Scotland must—
  - (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under section 209 must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (3) An assessment of a penalty under section 209—
  - (a) is to be treated for enforcement purposes as an assessment to tax, and
  - (b) may be combined with an assessment to tax.
- (4) An assessment of a penalty under section 209 must be made within the period of 12 months beginning with—
  - (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure to comply with the relevant requirement in respect of which the penalty is assessed, or
  - (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.
- (5) In subsection (4) “appeal period” means the period during which—
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to subsection (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

**216 Power to change penalty provisions in Chapter 5**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,

- (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.