



Finance Act 2003

2003 CHAPTER 14

PART 3

TAXES AND DUTIES ON IMPORTATION AND EXPORTATION: PENALTIES

Modifications etc. (not altering text)

- C1** Pt. 3 modified (17.12.2020 for specified purposes, 31.12.2020 in so far as not already in force) by 2018 c. 22, **Sch. 7 para. 158(7)** (as inserted by Taxation (Post-transition Period) Act 2020 (c. 26), s. 11(1)(e), Sch. 1 para. 10(6) (with **Sch. 2 para. 7(7)-(9)**); S.I. 2020/1642**reg. 9**)

Preliminary

24 Introductory

- (1) This Part makes provision for and in connection with the imposition of liability to a penalty where a person—
- engages in any conduct for the purpose of evading any relevant tax or duty, or
 - engages in any conduct by which he contravenes a duty, obligation, requirement or condition imposed by or under legislation relating to any relevant tax or duty.
- (2) For the purposes of this Part “relevant tax or duty” means any of the following—
- customs duty;
 - [^{F1}[^{F2}Union] export duty;]
 - [^{F3}[^{F4}Union] import duty;]
 - import VAT;
 - [^{F5}customs duty of a preferential tariff country.]
- (3) In this Part—
- “appeal tribunal” means a [^{F6}the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal];

Status: Point in time view as at 17/12/2020.

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

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“contravene” includes fail to comply with;

[^{F8}“customs duty of a preferential tariff country” includes a reference to any charge imposed by a preferential tariff country and having an equivalent effect to customs duty payable on the importation of goods into the territory of that country;]

“demand notice” means a demand notice within the meaning of section 30;

[^{F9}“HMRC” means “Her Majesty’s Revenue and Customs.”]

“import VAT” means value added tax chargeable by virtue of section 1(1) (c) of the Value Added Tax Act 1994 (c. 23) (importation of goods from places outside the member States);

“notice” means notice in writing;

[^{F8}“preferential tariff country” means a country outside the [^{F10}European Union] which is, or is a member of a group of countries which is, party to an agreement falling within [^{F11}Article 56(2)(d) of the Union Customs Code] (preferential tariff agreements with the Community);]

“prescribed” means specified in, or determined in accordance with, regulations made by the Treasury;

“relevant rule”, in relation to any relevant tax or duty, has the meaning given by subsection (8) of section 26 (as read with subsection (9) of that section);

“representative”, in relation to any person, means—

- (a) his personal representative,
- (b) his trustee in bankruptcy or interim or permanent trustee,
- (c) any receiver or liquidator appointed in relation to that person or any of his property,

or any other person acting in a representative capacity in relation to that person.

[^{F12}“Union Customs Code” means Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code;

“Union export duty” means export duty, as defined in Article 5(21) of the Union Customs Code;

“Union import duty” means import duty, as defined in Article 5(20) of the Union Customs Code.]

- (4) [^{F13}References in this Part to the [^{F14}Union Customs Code] are references to that Code as from time to time amended, whether before or after the coming into force of this Part.]
- (5) [^{F13}The Treasury may by order amend this Part for the purpose of replacing any reference to, or to a provision of,—
 - (a) the [^{F15}Union Customs Code], or
 - (b) any instrument referred to in this Part by virtue of an order under this subsection,
 with a reference to, or (as the case may be) to a provision of, a different instrument.]

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- (6) ^{F13} A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]
- (7) Except for this subsection and section 41 (which accordingly come into force on the passing of this Act), this Part comes into force on such day as the Treasury may by order appoint.

Textual Amendments

- F1** S. 24(2)(b) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(2\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F2** Word in s. 24(2)(b) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [4\(a\)](#) (with art. 6)
- F3** S. 24(2)(c) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(2\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F4** Word in s. 24(2)(c) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [4\(a\)](#) (with art. 6)
- F5** S. 24(2)(e) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(2\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F6** Words in s. 24(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 360\(2\)](#)
- F7** Words in s. 24(3) omitted (30.3.2018) by virtue of [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, 4(b)(i) (with art. 6); words further omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(3\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F8** Words in s. 24(3) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(3\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F9** Words in s. 24(3) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 360\(3\)](#)
- F10** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F11** Words in s. 24(3) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [4\(b\)\(ii\)](#) (with art. 6)
- F12** Words in s. 24(3) inserted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [4\(c\)](#) (with art. 6)
- F13** S. 24(4)-(6) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 148\(4\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F14** Words in s. 24(4) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [4\(d\)](#) (with art. 6)

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F15 Words in s. 24(5)(a) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, **4(d)** (with art. 6)

Commencement Information

I1 S. 24 partly in force; s. 24(7) in force at 10.7.2003, see s. 24(7)

I2 S. 24(1)-(6) in force at 27.11.2003 by [S.I. 2003/2985](#), **art. 2**

The penalties

25 Penalty for evasion

(1) In any case where—

- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
- (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded.

(2) Subsection (1) is subject to the following provisions of this Part.

[^{F16}(3) Nothing in this section applies in relation to any customs duty of a preferential tariff country.]

(4) Any reference in this section to a person’s “evading” any relevant tax or duty includes a reference to his obtaining or securing, without his being entitled to it,—

- (a) any repayment, rebate or drawback of any relevant tax or duty,
- (b) any relief or exemption from, or any allowance against, any relevant tax or duty, or
- (c) any deferral or other postponement of his liability to pay any relevant tax or duty or of the discharge by payment of any such liability,

and also includes a reference to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.

(5) In relation to any such evasion of any relevant tax or duty as is mentioned in subsection (4), the reference in subsection (1) to the amount of the tax or duty evaded or sought to be evaded is a reference to the amount of—

- (a) the repayment, rebate or drawback,
- (b) the relief, exemption or allowance, or
- (c) the payment which, or the liability to make which, is deferred or otherwise postponed,

as the case may be.

(6) Where, by reason of conduct falling within subsection (1) in the case of any relevant tax or duty, a person—

- (a) is convicted of an offence,
- (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 26, or
- (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,

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that conduct does not also give rise to liability to a penalty under this section in respect of that relevant tax or duty.

Textual Amendments

F16 S. 25(3) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 149](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)

Commencement Information

I3 S. 25 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

26 Penalty for contravention of relevant rule

- (1) If, in the case of any relevant tax or duty, a person of a prescribed description engages in any conduct by which he contravenes—
- a prescribed relevant rule, or
 - a relevant rule of a prescribed description,
- he is liable to a penalty under this section of a prescribed amount.

(2) Subsection (1) is subject to the following provisions of this Part.

(3) The power conferred by subsection (1) to prescribe a description of person includes power to prescribe any person (without further qualification) as such a description.

(4) Different penalties may be prescribed under subsection (1) for different cases or different circumstances.

(5) Any amount prescribed under subsection (1) as the amount of a penalty must not be more than £2,500.

[^{F17}(5A) Where the conduct constituting a contravention of a relevant rule is a contravention of a condition imposed under regulations under section 20(1A), 22(1A) or 25(1A) of the Customs and Excise Management Act 1979—

- the Treasury may by regulations provide that, in prescribed circumstances, there are to be deemed for the purposes of subsection (1) of this section to be further separate contraventions of the rule, and
- the provision that may be made by the regulations includes provision replicating or applying, with or without modifications, any provision made by section 20A(1A) or (1B), 22A(1A) or (1B) or 25A(1A) or (1B) of the Customs and Excise Management Act 1979.]

(6) The Treasury may by order amend subsection (5) by substituting a different amount for the amount for the time being specified in that subsection.

(7) A statutory instrument containing an order under subsection (6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

(8) In this Part “relevant rule”, in relation to any relevant tax or duty, means any duty, obligation, requirement or condition imposed by or under any of the following—

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- [^{F18}(za) Part 1 and sections 40A and 40B of the Taxation (Cross-border Trade) Act 2018, as they apply in relation to the relevant tax or duty;]
- (a) the Customs and Excise Management Act 1979 (c. 2), as it applies in relation to the relevant tax or duty;
 - (b) any other Act, or any statutory instrument, as it applies in relation to the relevant tax or duty;
 - (c) [^{F19}in the case of customs duty, Union export duty or Union import duty, Union customs legislation;]
 - (d) in the case of import VAT, [^{F20}Union customs legislation as it applies] in relation to import VAT;
 - (e) [^{F21}any directly applicable [^{F22}EU] legislation relating to the relevant tax or duty;]
 - (f) any relevant international rules applying in relation to the relevant tax or duty.

(9) In subsection (8)—

^{F23}

“relevant international rules” means international agreements so far as applying in relation to a relevant tax or duty and having effect as part of the law of any part of the United Kingdom by virtue of—

- (a) any Act or statutory instrument, [^{F24}or
- (b) any directly applicable [^{F22}EU] legislation.]

[^{F25}“Union customs legislation” means customs legislation, as defined in Article 5(2) of the Union Customs Code.]

Textual Amendments

- F17** S. 26(5A) inserted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 150\(2\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F18** S. 26(8)(za) inserted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 150\(3\)\(a\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#) (as amended by [Taxation \(Post-transition Period\) Act 2020 \(c. 26\)](#), s. 11(1)(e), [Sch. 1 para. 10\(4\)](#) (with [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 9](#))
- F19** S. 26(8)(c) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 150\(3\)\(b\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F20** Words in s. 26(8)(d) substituted (30.3.2018) by [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, [5\(b\)](#) (with art. 6)
- F21** S. 26(8)(e) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 150\(3\)\(b\)](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)
- F22** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F23** Words in s. 26(9) omitted (30.3.2018) by virtue of [The Finance Act 2003, Part 3 \(Amendment\) Order 2018 \(S.I. 2018/461\)](#), arts. 1, 5(c)(i) (with art. 6); words further omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\)](#)

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Act 2018 (c. 22), s. 57(1)(a), **Sch. 7 para. 150(4)(a)** (with savings and transitional provisions in S.I. 2020/1449, **reg. 3** and 2020 c. 26, **Sch. 2 para. 7(7)-(9)**); S.I. 2020/1642, **reg. 4(a)**

F24 Words in s. 26(9) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of **Taxation (Cross-border Trade) Act 2018 (c. 22)**, s. 57(1)(a), **Sch. 7 para. 150(4)(b)** (with savings and transitional provisions in S.I. 2020/1449, **reg. 3** and 2020 c. 26, **Sch. 2 para. 7(7)-(9)**); S.I. 2020/1642, **reg. 4(a)**

F25 Words in s. 26(9) inserted (30.3.2018) by **The Finance Act 2003, Part 3 (Amendment) Order 2018 (S.I. 2018/461)**, arts. 1, **5(c)(ii)** (with art. 6)

Modifications etc. (not altering text)

C2 Ss. 26, 27 applied (17.7.2014) by **Finance Act 2014 (c. 26)**, **s. 102(2)**

Commencement Information

I4 S. 26 in force at 27.11.2003 by **S.I. 2003/2985**, **art. 2**

27 Exceptions from section 26

- (1) A person is not liable to a penalty under section 26 if he satisfies—
 - (a) the Commissioners, or
 - (b) on appeal, an appeal tribunal,that there is a reasonable excuse for his conduct.
- (2) For the purposes of subsection (1) none of the following is a reasonable excuse—
 - (a) an insufficiency of funds available to any person for paying any relevant tax or duty or any penalty due;
 - (b) that reliance was placed by any person on another to perform any task;
 - (c) that the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was so placed.
- (3) Where, by reason of conduct falling within subsection (1) of section 26 in the case of any relevant tax or duty, a person—
 - (a) is prosecuted for an offence,
 - (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 25, or
 - (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,that conduct does not also give rise to liability to a penalty under section 26 in respect of that relevant tax or duty.
- (4) A person is not liable to a penalty under section 26 in respect of any conduct, so far as relating to import VAT, if in respect of that conduct—
 - (a) he is liable to a penalty under any of sections 62 to 69A of the Value Added Tax Act 1994 (c. 23) (penalty for contravention of statutory requirements as to VAT), or
 - (b) he would be so liable but for section 62(4), 63(11), 64(6), 67(9), 69(9) or 69A(7) of that Act (conduct resulting in conviction, different penalty etc).

Modifications etc. (not altering text)

C2 Ss. 26, 27 applied (17.7.2014) by **Finance Act 2014 (c. 26)**, **s. 102(2)**

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Commencement Information

I5 S. 27 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

28 Liability of directors etc where body corporate liable to penalty for evasion

- (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under section 25, and
 - (b) that the conduct giving rise to the penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “relevant officer”),
- the Commissioners may give a notice under this section to the body corporate (or its representative) and to the relevant officer (or his representative).
- (2) A notice under this section must state—
- (a) the amount of the penalty referred to in subsection (1)(a) (the “basic penalty”), and
 - (b) that the Commissioners propose, in accordance with this section, to recover from the relevant officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
- (3) If a notice is given under this section, this Part shall apply in relation to the relevant officer as if he were personally liable under section 25 to a penalty which corresponds to that portion of the basic penalty specified in the notice.
- (4) If a notice is given under this section—
- (a) the amount which may be recovered from the body corporate under this Part is limited to so much (if any) of the basic penalty as is not recoverable from the relevant officer by virtue of subsection (3), and
 - (b) the body corporate is to be treated as discharged from liability for so much of the basic penalty as is so recoverable from the relevant officer.
- (5) In this section “managing officer”, in relation to a body corporate, means—
- (a) a manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in any such capacity or as a director.
- (6) Where the affairs of a body corporate are managed by its members, this section applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

Commencement Information

I6 S. 28 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

Reduction of amount of penalty

29 Reduction of penalty under section 25 or 26

- (1) Where a person is liable to a penalty under section 25 or 26—

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- (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - (b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners.
- (2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).
- (3) Those matters are—
- (a) the insufficiency of the funds available to any person for paying any relevant tax or duty or 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 any relevant tax or duty,
 - (c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **s. 102(2)**

Commencement Information

I7 S. 29 in force at 27.11.2003 by [S.I. 2003/2985](#), **art. 2**

Demand notices

30 Demands for penalties

- (1) Where a person is liable to a penalty under this Part, the Commissioners may give to that person or his representative a notice in writing (a “demand notice”) demanding payment of the amount due by way of penalty.
- (2) An amount demanded as due from a person or his representative in accordance with subsection (1) is recoverable as if it were an amount due from the person or, as the case may be, the representative as an amount of customs duty.

This subsection is subject to—

- (a) any appeal under section [\[^{F26}33\]](#) (appeals to tribunal); and
 - (b) subsection (3).
- (3) An amount so demanded is not recoverable if or to the extent that—
- (a) the demand has subsequently been withdrawn; or
 - (b) the amount has been reduced under section 29.

Textual Amendments

F26 Word in s. 30(2)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), **art. 1(2)**, **Sch. 1 para. 361**

Status: Point in time view as at 17/12/2020.

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Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 102\(2\)](#)

Commencement Information

I8 S. 30 in force at 27.11.2003 by [S.I. 2003/2985, art. 2](#)

31 Time limits for demands for penalties

- (1) A demand notice may not be given—
- (a) in the case of a penalty under section 25, more than 20 years after the conduct giving rise to the liability to the penalty ceased, or
 - (b) in the case of a penalty under section 26, more than 3 years after the conduct giving rise to the liability to the penalty ceased.
- (2) A demand notice may not be given more than 2 years after there has come to the knowledge of the Commissioners evidence of facts sufficient in the opinion of the Commissioners to justify the giving of the demand notice.
- (3) A demand notice—
- (a) may be given in respect of a penalty to which a person was liable under section 25 or 26 immediately before his death, but
 - (b) in the case of a penalty to which the deceased was so liable under section 25, may not be given more than 3 years after his death.

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 102\(2\)](#)

Commencement Information

I9 S. 31 in force at 27.11.2003 by [S.I. 2003/2985, art. 2](#)

32 No prosecution after demand notice for penalty under section 26

- [^{F27}(1)] Where a demand notice is given demanding payment of an amount due by way of penalty under section 26 in respect of any conduct of a person, no proceedings may be brought against that person for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn).
- [^{F28}(2) Nothing in subsection (1) prevents the bringing of proceedings against a person for an offence under section 20A(1A), 22A(1A) or 25A(1A) of the Customs and Excise Management Act 1979 in circumstances where it is alleged that the person is liable to a penalty of an enhanced amount.]

Textual Amendments

F27 S. 32 renumbered as s. 32(1) (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(1\)\(a\), Sch. 7 para. 151\(a\)](#) (with savings and transitional provisions in [S.I. 2020/1449, reg. 3](#) and [2020 c. 26, Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642, reg. 4\(a\)](#)

Status: Point in time view as at 17/12/2020.

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F28 S. 32(2) inserted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by Taxation (Cross-border Trade) Act 2018 (c. 22), s. 57(1)(a), **Sch. 7 para. 151(b)** (with savings and transitional provisions in S.I. 2020/1449, **reg. 3** and 2020 c. 26, **Sch. 2 para. 7(7)-(9)**); S.I. 2020/1642, **reg. 4(a)**

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by Finance Act 2014 (c. 26), **s. 102(2)**

Commencement Information

I10 S. 32 in force at 27.11.2003 by S.I. 2003/2985, **art. 2**

[^{F29}Appeals and reviews]

Textual Amendments

F29 S. 33 crossheading substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 362** (with Sch. 3 paras. 2-4)

33 [^{F30}**Right to appeal against certain decisions**]

- (1) If, in the case of any relevant tax or duty, [^{F31}HMRC] give a person or his representative a notice informing him—
- (a) that they have decided that the person has engaged in conduct by which he contravenes a relevant rule, and
 - (b) that the person is, in consequence, liable to a penalty under section 26, but
 - (c) that they do not propose to give a demand notice in respect of the penalty,
- the person or his representative may [^{F32}make an appeal to an appeal tribunal in respect of] the decision mentioned in paragraph (a).
- (2) Where [^{F33}HMRC] give a demand notice to a person or his representative, the person or his representative may [^{F34}make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the person is liable to a penalty under section 25 or 26, or
 - (b) their decision as to the amount of the liability.
- (3) Where [^{F35}HMRC] give a notice under section 28 to a body corporate and to a relevant officer—
- (a) subsection (2) does not apply to any demand notice given in respect of the liability of either of them to a penalty under this Part in respect of the conduct in question, but
 - (b) subsections (4) and (5) have effect instead in relation to any such demand notice.
- (4) Where [^{F36}HMRC] give a demand notice to the relevant officer or his representative for a penalty which corresponds to the portion of the basic penalty specified in the notice under section 28, the relevant officer or his representative may [^{F37}make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the conduct of the body corporate referred to in section 28(1)(b) is, in whole or in part, attributable to the relevant officer's dishonesty, or

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- (b) their decision as to the portion of the basic penalty which the [F38HMRC] are seeking to recover from the relevant officer or his representative.
- (5) Where [F39HMRC] give a demand notice to the body corporate or its representative for so much of the basic penalty as is not recoverable from the relevant officer by virtue of section 28(3), the body corporate or its representative may [F40make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the body corporate is liable to a penalty under section 25, or
- (b) their decision as to amount of the basic penalty as if it were the amount specified in the demand notice.
- [F41(6) The powers of an appeal tribunal on an appeal under this section include—
- (a) power to quash or vary a decision; and
- (b) power to substitute the tribunal’s own decision for any decision so quashed.
- (7) On an appeal under this section—
- (a) the burden of proof as to the matters mentioned in section 25(1) or 26(1) lies on HMRC; but
- (b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.]

Textual Amendments

- F30** S. 33 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(2)** (with Sch. 3 paras. 2-4)
- F31** Word in s. 33(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(3)(a)** (with Sch. 3 paras. 2-4)
- F32** Words in s. 33(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(3)(b)** (with Sch. 3 paras. 2-4)
- F33** Word in s. 33(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(4)(a)** (with Sch. 3 paras. 2-4)
- F34** Words in s. 33(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(4)(b)** (with Sch. 3 paras. 2-4)
- F35** Word in s. 33(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(5)** (with Sch. 3 paras. 2-4)
- F36** Word in s. 33(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(6)(a)** (with Sch. 3 paras. 2-4)
- F37** Words in s. 33(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(6)(b)** (with Sch. 3 paras. 2-4)
- F38** Word in s. 33(4)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(6)(c)** (with Sch. 3 paras. 2-4)
- F39** Word in s. 33(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(7)(a)** (with Sch. 3 paras. 2-4)
- F40** Words in s. 33(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(7)(b)** (with Sch. 3 paras. 2-4)
- F41** S. 33(6)(7) substituted for s. 33(6) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 363(8)** (with Sch. 3 paras. 2-4)

Modifications etc. (not altering text)

- C3** Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), s. 102(2)

Status: Point in time view as at 17/12/2020.

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Commencement Information

I11 S. 33 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

[^{F42}33A Offer of review

- (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under section 33 in respect of the decision.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This section does not apply to the notification of the conclusions of a review.

Textual Amendments

F42 Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 364](#) (with [Sch. 3 paras. 2-4](#))

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [s. 102\(2\)](#)

33B Review by HMRC

- (1) HMRC must review a decision if—
 - (a) they have offered a review of the decision under section 33A, and
 - (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the appeal tribunal under section 33F.
- (3) HMRC shall not review a decision if P has appealed to the appeal tribunal under section 33F in respect of the decision.

Textual Amendments

F42 Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 364](#) (with [Sch. 3 paras. 2-4](#))

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [s. 102\(2\)](#)

33C Extensions of time

- (1) If under section 33A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If notice is given the relevant period is extended to the end of 30 days from—
 - (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.

Status: Point in time view as at 17/12/2020.

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- (3) In this section “relevant period” means—
- (a) the period of 30 days referred to in section 33B(1)(b), or
 - (b) if notice has been given under subsection (1) that period as extended (or as most recently extended) in accordance with subsection (2).

Textual Amendments

F42 Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 364** (with Sch. 3 paras. 2-4)

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **s. 102(2)**

33D Review out of time

- (1) This section applies if—
- (a) HMRC have offered a review of a decision under section 33A, and
 - (b) P does not accept the offer within the time allowed under section 33B(1)(b) or 33C(2).
- (2) HMRC must review the decision under section 33B if—
- (a) after the time allowed, P notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not review a decision if P has appealed to the appeal tribunal under section 33F in respect of the decision.

Textual Amendments

F42 Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 364** (with Sch. 3 paras. 2-4)

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **s. 102(2)**

33E Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 33B or 33D.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purpose of subsection (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
- (a) by HMRC in reaching the decision, and

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- (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P notice of the conclusions of the review and their reasoning within—
 - (a) a period of 45 days beginning with the relevant date, or
 - (b) such other period as HMRC and P may agree.
- (7) In subsection (6) “relevant date” means—
 - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within section 33A), or
 - (b) the date on which HMRC decided to undertake the review (in a case falling within section 33D).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the period specified in subsection (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If subsection (8) applies, HMRC must notify P of the conclusions which the review is treated as having reached.

Textual Amendments

F42 Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 364** (with Sch. 3 paras. 2-4)

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **s. 102(2)**

33F Bringing of appeals

- (1) An appeal under section 33 is to be made to the appeal tribunal before—
 - (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
 - (b) if later, the end of the relevant period (within the meaning of section 33C).
- (2) But that is subject to subsections (3) to (5).
- (3) In a case where HMRC are required to undertake a review under [^{F43}section 33B] —
 - (a) an appeal may not be made until the conclusion date, and
 - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- [^{F44}(4) In a case where HMRC are requested to undertake a review in accordance with section 33D—
 - (a) an appeal may not be made to an appeal tribunal—

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- (i) unless HMRC have notified P as to whether or not a review will be undertaken, and
 - (ii) if HMRC have notified P that a review will be undertaken, until the conclusion date;
 - (b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;
 - (c) if HMRC have notified P that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.]
- (5) In a case where section 33E(8) applies, an appeal may be made at any time from the end of the period specified in section 33E(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in subsection (1), (3)(b), (4)(b) or (5) if an appeal tribunal gives permission to do so.
- (7) In this section “conclusion date” means the date of the document notifying the conclusions of the review.]

Textual Amendments

- F42** Ss. 33A-33F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 364** (with Sch. 3 paras. 2-4)
- F43** Words in s. 33F(3) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), **8(2)**
- F44** S. 33F(4) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), **8(3)** (with art. 1(3))

Modifications etc. (not altering text)

- C3** Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), s. **102(2)**

^{F45}34 Time limit and right to further review

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Textual Amendments

- F45** Ss. 34-36 and cross-heading preceding s. 36 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 365** (with Sch. 3 paras. 2-4)

^{F45}35 Powers of Commissioners on a review

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Textual Amendments

- F45** Ss. 34-36 and cross-heading preceding s. 36 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 365** (with Sch. 3 paras. 2-4)

Status: Point in time view as at 17/12/2020.

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^{F45} 36 Appeals to a tribunal

Textual Amendments

- F45** Ss. 34-36 and cross-heading preceding s. 36 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 365** (with Sch. 3 paras. 2-4)

[^{F46} 37 Appeal tribunals

Section 85 of the Value Added Tax Act 1994 (settling appeals by agreement) has effect as if the reference to section 83 of that Act included a reference to section 33 above.]

Textual Amendments

- F46** S. 37 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 366** (with Sch. 3 paras. 2-4)

Modifications etc. (not altering text)

- C3** Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **s. 102(2)**

Evidence

38 Admissibility of certain statements and documents

- (1) Statements made or documents produced by or on behalf of a person are not inadmissible in—
- any criminal proceedings against that person in respect of any offence in connection with or in relation to any relevant tax or duty, or
 - any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any relevant tax or duty,
- by reason only that any of the matters specified in subsection (2) has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (2) The matters mentioned in subsection (1) are—
- that the Commissioners have power, in relation to any relevant tax or duty, to demand by means of a written notice an amount by way of a civil penalty, instead of instituting criminal proceedings;
 - that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such a demand in any case, to be influenced in determining whether to make such a demand by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
 - that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under section 25, as provided in subsection (1) of section 29; and

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- (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.

[^{F47}(3) References in this section to a relevant tax or duty do not include a reference to customs duty of a preferential tariff country.]

Textual Amendments

F47 S. 38(3) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), [Sch. 7 para. 152](#) (with savings and transitional provisions in [S.I. 2020/1449](#), [reg. 3](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(a\)](#)

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [s. 102\(2\)](#)

Commencement Information

I12 S. 38 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

Miscellaneous and supplementary

39 Service of notices

Any notice to be given to any person for the purposes of this Part may be given by sending it by post in a letter addressed to that person or his representative at the last or usual residence or place of business of that person or representative.

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [s. 102\(2\)](#)

Commencement Information

I13 S. 39 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

^{F48}**40 Penalties not to be deducted for income tax or corporation tax purposes**

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Textual Amendments

F48 S. 40 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

41 Regulations and orders

- (1) Any power conferred on the Treasury by this Part to make regulations or an order includes power—
- (a) to make different provision for different cases, and

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- (b) to make incidental, consequential, supplemental or transitional provision or savings.
- (2) Any power conferred on the Treasury by this Part to make regulations or an order shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Part shall be subject to annulment in pursuance of a resolution of the House of Commons.

Modifications etc. (not altering text)

C3 Ss. 29-41 applied (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 102\(2\)](#)

Status:

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Changes to legislation:

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