

TAX CREDITS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Tax Credits

Schedule 2: Supplementary

135. This Schedule deals with the procedural and supplemental provisions relating to penalties.
136. *Paragraph 1* provides the framework for the Board to make determinations of penalties. It provides that the Board may make a determination of a penalty under section 31, 32(2)(b) or (3) and 33 at such level within the statutory maximum as they consider appropriate. It provides for a notice of the determination to be given to a person on whom a penalty is imposed, stating the date of issue and details of their right to appeal. The amount of a penalty can only be altered on appeal. A penalty is due and payable 30 days after the date on which the notice of it is given.
137. *Paragraph 2* covers appeals against penalty determinations under *paragraph 1*. On appeal, the Commissioners may reduce, confirm, increase or set aside the penalty. There is a right of appeal to the High Court or the Court of Session against the Commissioners' decision.
138. *Paragraph 3* concerns penalty proceedings before the Commissioners. It provides that the Board may take penalty proceedings before the Commissioners for a penalty under section 32(2)(a). The proceedings must be initiated by notice in writing to the Commissioners.
139. *Paragraph 4* provides that an appeal against the determination of a penalty in proceedings under *paragraph 3* must be made to the appropriate civil court and that the court may set aside, confirm, reduce or increase the penalty.
140. *Paragraph 5* gives the Board the power to mitigate or entirely remit any penalty under Part 1 of the Act.
141. *Paragraph 6* sets out the time limits for imposing penalties under sections 31, 32 and 33. It provides that, for a penalty under section 31, a determination of the penalty must be made within one year of the latest of:
- the expiry of the time for starting an enquiry under section 19;
 - the date on which an enquiry under section 19 is completed; and
 - the date on which a decision on discovery is made under section 20(1) or (4).
142. The time limit for imposing penalties under section 32 is one year after the latest of:
- the expiry of the time for starting an enquiry; and
 - the date on which an enquiry is completed.

*These notes refer to the Tax Credits Act 2002
(c.21) which received Royal Assent on 8 July 2002*

143. For penalties under sections 31 and 32 in relation to the obligations on employers under section 25, and penalties under section 33, the penalty determination must be made, or proceedings started, within 6 years after the penalty was incurred or began to be incurred.
144. *Paragraph 7* sets out the provisions relating to the recovery of penalties. *Sub-paragraph (1)* allows for penalties to be recovered directly under the relevant provisions of the Taxes Management Act 1970. *Sub-paragraph (2)* allows for penalties to be recovered through tax codes
145. Until the day appointed by order under section 63(1), the effect of that section is that, except in relation to penalties imposed on employers, appeals about penalties are to an appeal tribunal or to the Social Security Commissioner as appropriate, rather than to the General Commissioners or Special Commissioners or the High Court or Court of Session. Except in relation to penalties imposed on employers for failure to provide information, proceedings under paragraph 3 of this Schedule are to an appeal tribunal rather than to the General Commissioners or Special Commissioners.