

REVENUE SCOTLAND AND TAX POWERS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (“the Committee”) in its consideration of the Revenue Scotland and Tax Powers Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced, amended or removed from the Bill at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 30A - Power for the Scottish Ministers to make regulations regarding voting in a case before the First-Tier Tribunal or Upper Tribunal which is to be decided by two or more members

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

2. In relation to the power in section 30A, sections 27 and 28 make provision about how decisions in the Scottish Tax Tribunals are to be made. The power in section 30A allows the Scottish Ministers to provide for how decisions are to be voted for when tribunals are composed of 2 or more members, for example by giving a chairing member a casting vote in the event of a tie or for a decision to be made unanimously or by majority.

Reason for taking power

3. The Scottish Tax Tribunals set up as part of the Bill will at some point in the future be transferred into the new Scottish Tribunals Service structure set up as a result of the provisions in the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The process of this transfer will be made easier if the legislation underpinning the Scottish Tax Tribunals mirrors that in the 2014 Act.

4. A number of the amendments made to the Bill at Stage 2 were therefore to align the provisions concerning the Scottish Tax Tribunals with those set out in the 2014 Act. The

regulation making power in section 30A has been added at Stage 2 to mirror the equivalent power in section 41 of the 2014 Act.

5. If a panel of the First-tier or Upper Tribunal consists of an even number of members, a tie is naturally possible. Generally, a tie is something that needs to be dealt with. In addition, it may be that it is appropriate to make provision for particular types of decisions to be taken unanimously (for example, in important cases). This is all for the sake of ensuring legal certainty and clarity in decision-making.

Reason for choice of procedure

6. Affirmative procedure is considered to be appropriate as this power concerns the question of how decisions are made in the Scottish Tribunals and the similar regulation making power in section 41 of the 2014 Act is subject to affirmative procedure.

Section 45A – Offences in relation to proceedings

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

7. This power allows the Scottish Ministers to create offences and criminal penalties in connection with proceedings before the Scottish Tax Tribunals. Subsection (1)(a) of section 45A describes the things which may be made an offence.

8. As well as allowing offences or criminal penalties to be created in respect of failure or refusal to give or produce evidence, this power allows the Scottish Ministers to specify the circumstances in which a person can refuse to give or produce evidence in proceedings before the Scottish Tax Tribunals. Section 45A(2) sets out maximum penalties that may be provided for in the regulations. If the offence is triable summarily only then the maximum penalties would be imprisonment for not more than 12 months or a fine not exceeding level 5 on the standard scale (or both). If the offence is triable either summarily or on indictment the maximum penalties would be, on summary conviction, imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (or both). On conviction on indictment, the maximum penalties would be imprisonment not exceeding 2 years or a fine (or both). Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

Reason for taking power

9. As explained in paragraph 4, a number of the amendments made to the Bill at Stage 2 were to align the provisions concerning the Scottish Tax Tribunals with those set out in the 2014 Act. The regulation making power in section 45A has been added at Stage 2 to mirror the equivalent power in section 67 of the 2014 Act. This power allows offences and criminal penalties to be created within the Scottish Tax Tribunals system where it is required and appropriate to do so in relation to the devolved taxes.

Reason for choice of procedure

10. Affirmative procedure is considered to be appropriate, alongside a requirement for the approval of the Lord President, as this power concerns the creation of criminal offences and penalties. The similar regulation making power in section 67 of the 2014 Act is subject to affirmative procedure.

Section 46(1) - Power to make Scottish Tax Tribunal Rules

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure
Amended or new: amended

Provision

11. This power allows the Scottish Ministers to make Scottish Tax Tribunal Rules regulating the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals. Tribunal Rules may also contain other provision appropriate for the Tax Tribunals including provision regarding the exercising of their functions. Various sections in the Bill allow Tribunal Rules to make provision on matters relating to the work of the Scottish Tax Tribunals.

12. A number of other provisions in the Bill were added or amended at Stage 2 in relation to Tribunal Rules made under section 46(1). These are:

- Section 30B(1) - This power allows the Scottish Ministers to provide in Tribunal Rules for who is to chair when tribunals are composed of more than one member. It is considered that this matter is appropriately addressed in Rules as it is largely an operational, rather than substantive question. All members of tribunals will have equal judicial capacity in all their functions, by virtue of section 26. The type and qualification of members who will comprise a tribunal is determined by composition regulations, made under section 30(1), and subject to the affirmative procedure.

The determination of the identity of the particular member who is to chair is not a question of principle, and is therefore most appropriately dealt with operationally by Rules made under section 30B(1). Also to be noted is the reference to types of members or particular expertise (and that different provision can be made for different purposes).

- Section 41(2) – this allows Tribunal Rules to provide where and when the Scottish Tax Tribunals are to be convened. The Rules may allow the President of the Tax Tribunals to determine this question.
- Section 49(2)(ca) – this allows Tribunal Rules to make provision for conjoining applications in certain circumstances.
- Section 50(2)(ea) – this allows Tribunal Rules to make provision for hearings in two or more proceedings to be held together.

- Section 51(4) – this allows Tribunal Rules to make provision about the form, manner, content, recording, issuing and publication of tribunal decisions.

Reason for taking power

13. Rules governing the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals relate to technical procedural matters which will be detailed and may need to be amended from time to time. It is not therefore appropriate to set out these matters on the face of the Bill.

14. The Bill as introduced proposed that Scottish Tax Tribunal Rules be made by an Act of Sederunt by the Court of Session. Until the Scottish Tax Tribunals become judicially administered by the proposed Scottish Courts and Tribunals Service, with Rules drafted under the auspices of the Scottish Civil Justice Council (“SCJC”), Tribunal Rules will instead be made by the Scottish Ministers rather than the Court of Session. This is a similar arrangement as is proposed under paragraph 4 of schedule 9 to the 2014 Act, which requires that the Scottish Ministers make Tribunal Rules in regulations which are subject to negative procedure.

Reason for choice of procedure

15. Negative procedure is considered to be appropriate because Tribunal Rules will be technical and administrative in nature. The corresponding provision in the 2014 Act provides that regulations making Tribunal Rules are subject to negative procedure.

Section 70(b) - Power to prescribe conditions or exceptions to the ability to preserve information in records in any form or by any means.

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by statutory instrument
Parliamentary procedure:	negative procedure
Amended or new:	new

Provision

16. The provision allows the Scottish Ministers to make regulations that provide for conditions or exceptions to the provision in section 70(b) that the duty in section 69 to preserve records may be satisfied by preserving the information contained in the records in any form and by any means.

Reason for taking power

17. At Stage 1 the Committee queried why section 70(b) of the Bill as introduced allowed for such conditions or exceptions to be specified in writing by Revenue Scotland. The Committee recommended that it would be more appropriate for the power in section 70(b) as introduced to be exercisable by a form of subordinate legislation which would be subject to scrutiny by Parliamentary procedure, rather than by an informal specification written by Revenue Scotland and which would not be subject to Parliamentary scrutiny.

18. The Scottish Government accepted this recommendation and undertook to introduce a new regulation making power at Stage 2, subject to negative procedure, for the Scottish Ministers to specify the conditions or exceptions to the section 70(b) provision.

Reason for choice of procedure

19. Negative procedure is considered to be appropriate because this power generally involves setting conditions or exceptions which are administrative in nature. The power will provide flexibility to amend the conditions and exceptions in the light of experience.

Section 71D(1) - Power to make provision (or further provision) about penalties under Part 6, Chapter 2 (failure to keep and preserve records).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

20. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 6, Chapter 2 of the Bill for failure to keep and preserve records as required under section 69. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

21. This power is necessary in order to make further provision, or to amend current provision in light of experience, about penalties relating to a failure to keep and preserve records.

22. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

23. While detail has now been included in the Bill, it is still necessary to include this power to allow some flexibility around the penalty provisions. For example, the penalty amount may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

Reason for choice of procedure

24. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 72(2) - Power for the Scottish Ministers to make regulations that make provision for keeping and preserving records that relate to transactions that are not notifiable for Land and Buildings Transaction Tax (“LBTT”).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: amended

Provision

25. The provision allows the Scottish Ministers to make regulations that provide for the keeping and preservation of records in relation to LBTT transactions that are not notifiable. The regulations may apply sections 69 to 71C (with or without modifications) to buyers where the transaction does not need to be notified.

Reason for taking power

26. To allow the Scottish Ministers to be able to require records relating to a LBTT transaction that is not notifiable to be kept and preserved. If a buyer in such a transaction fails to keep and preserve these records, the buyer can be liable to the penalty in section 71.

27. At Stage 2 the Bill was amended to include four new sections (71A to 71D) in relation to the penalty in section 71 for failing to keep and preserve records. A necessary amendment was also made to section 72(4) to ensure that the scope of the sections to which the regulations can apply was widened to include three of these new sections (sections 71A to 71C).

Choice of procedure

28. Affirmative procedure is considered appropriate because regulations made under section 72(2) can make sections 69 to 71C apply to LBTT transactions that are not notifiable, including making a buyer in such a transaction liable to the penalty in section 71.

Section 102(1) - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: amended

Provision

29. The provision allows the Scottish Ministers to make regulations that prevent any reimbursement for the purposes of a defence of unjustified enrichment. Unjustified enrichment may occur where a repayment of tax is made to a taxpayer, but the taxpayer has not ultimately borne the cost of the tax. Section 103 provides that the regulations may make provision for penalties for breaches of obligations imposed by virtue of section 102(4).

Reason for taking power

30. To ensure that the Scottish Ministers have the power to prevent a repayment of tax unjustly enriching a claimant. A repayment of tax could proceed if the arrangements to reimburse the persons who ultimately paid the tax comply with the regulations.

31. Records must be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out. Given the importance of ensuring that any repayment of tax is reimbursed to the persons who ultimately paid the tax, penalties could also apply for non-compliance with obligations set out in the regulations.

Reason for choice of procedure

32. At Stage 1 the Committee queried why regulations made under this power were only subject to affirmative procedure where primary legislation was being amended. The Committee took the view that as these regulations can include provision about a penalty under section 103 of the Bill (as introduced), to ensure consistency with the other penalty-related regulation making powers in the Bill, regulations under section 102(4) should always be subject to affirmative procedure, whether primary legislation is being amended or not.

33. Having taken account of the Committee's recommendation, the Bill has been amended at Stage 2 so that regulations made under the power in section 102(1) are now always subject to affirmative procedure.

Section 144A - Power to modify section 144(2)-(7) in relation to whether certain decisions about information notices are appealable or not appealable.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

34. This power allows the Scottish Ministers to modify section 144(2)-(7) to provide for whether certain decisions or requirements relating to information notices are:

- appealable for the purposes of section 198(1)(f)
- to be appealable only on certain grounds or in certain circumstances
- not appealable

35. An information notice is defined in section 123(1) of the Bill (as amended at Stage 2) as being a notice issued under section 115, 116, 119 or 122 of the Bill. Section 144 of the Bill already provides for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances. Section 198(1)(f) and 198(2) provide that a decision of Revenue Scotland in relation to the giving of an information notice is appealable, subject to section 144.

Reason for taking power

36. This power is necessary in order to modify, in the light of experience or for compliance or operational effectiveness purposes, the list of decisions relating to information notices that are appealable or not appealable.

Reason for choice of procedure

37. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. A similar order making power in section 198(6) of the Bill to amend the list of Revenue Scotland decisions that are appealable or not appealable is also subject to affirmative procedure.

Section 159A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 2 (failure to make returns or pay tax on time).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

38. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 2 of the Bill for failure to make a return by the filing date or failure to pay tax on time. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

39. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to a failure to make a return before the filing date or pay tax on time. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

40. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

41. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 166A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 3 (giving documents with inaccuracies to Revenue Scotland or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

42. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 3 of the Bill which covers giving Revenue Scotland a document containing an inaccuracy or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax.

43. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

44. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to giving Revenue Scotland a document containing an inaccuracy or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

45. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

46. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 180A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 4, apart from the penalty in section 179.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

47. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 4 of the Bill which relate to investigations by Revenue Scotland. Such penalties include a failure (or continued failure) to comply with an information notice, obstruction (or continued obstruction) of an inspection and giving Revenue Scotland inaccurate information or documents in relation to an information notice. The regulations cannot make provision about the penalty in section 179, which is decided by the Upper Tribunal.

48. Such provision which can be made includes the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

49. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to investigations in Part 8, Chapter 4 of the Bill. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

50. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

51. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 181G(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 5, failing to register or unregister for tax.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

52. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 5 of the Bill which relate to a failure to register or unregister for Scottish Landfill Tax (“SLfT”), as required by sections 22 and 23 of the Landfill Tax (Scotland) Act 2014.

53. Such provision which can be made includes the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

54. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to registration for SLfT. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

55. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

56. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 194A - Power to modify section 194(2) in relation to whether certain decisions about notices under section 193 are appealable or not appealable.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

57. This power allows the Scottish Ministers to modify section 194(2) to make further provision about whether certain decisions or requirements relating to a notice under section 193 are:

- appealable for the purposes of section 198(1)(g)
- to be appealable only on certain grounds or in certain circumstances
- not appealable

58. Section 193 provides a designated officer with the power to give a notice to a third party requiring them to provide the contact details of a debtor to Revenue Scotland. Section 194(2) of the Bill already provides that a third party receiving such a notice can only give notice of review or appeal on the grounds that to comply with such a notice would be unduly onerous. Section 198(1)(g) and 198(3) provide that a decision of Revenue Scotland in relation to the giving of a notice under section 193 is appealable, subject to section 194(2).

Reason for taking power

59. This power is necessary in order to modify, in the light of experience or for compliance or operational effectiveness purposes, whether certain decisions or requirements relating to a notice given under section 193 are appealable or not appealable.

Reason for choice of procedure

60. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. A similar order making power in section 198(6) of the Bill to amend the list of Revenue Scotland decisions that are appealable or not appealable is also subject to affirmative procedure.

Schedule 3 paragraph 5D(1) - Power to make provision (or further provision) about penalties under paragraphs 5 to 5C in schedule 3 (failure to keep and preserve records as required under schedule 3, paragraph 3).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

61. This power allows the Scottish Ministers to make provision, or further provision, about penalties under paragraphs 5 to 5C of schedule 3 to the Bill. Such penalties relate to a failure to keep and preserve records in relation to a claim under section 97, 98 or 99 of the Bill, and as required under paragraph 3 of schedule 3. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

62. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties for a failure to keep and preserve records in relation to a claim under section 97, 98 or 99 of the Bill. For example, the penalty amount may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

63. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

64. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION REMOVED AT STAGE 2

Section 73(1) on introduction – Power to make regulations about the dates by which tax returns must be made to Revenue Scotland.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

65. This regulation making power has been removed following amendment of the Bill at Stage 2. The power concerned enabled the Scottish Ministers by regulations to make provision about the dates by which tax returns must be made to Revenue Scotland.

66. It was decided that the dates by which tax returns must be made to Revenue Scotland should be provided for in tax-specific legislation and not in the Revenue Scotland and Tax Powers Bill. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 73(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 150(2) on introduction – Power to make further provision about penalties for failure to make a tax return

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

67. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 159A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 150 of the Bill, which relates to a failure to make a tax return on or before the filing date.

68. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 150(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 151(2) on introduction – Power to make further provision about penalties for failure to pay tax on or before the due date

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

69. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 159A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 151 of the Bill, which relate to a failure to pay tax on or before the due date.

70. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 151(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 160(7) on introduction – Power to make further provision about penalties for errors in taxpayer documents

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

71. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 160 of the Bill, which relate to submitting documents to Revenue Scotland containing inaccuracies.

72. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 160(7) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 162(4) on introduction – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

73. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 162 of the Bill, which relate to submitting documents to Revenue Scotland containing inaccuracies attributable to another person.

74. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 162(4) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 163(3) on introduction – Power to make further provision about penalties for failure to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

75. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 162 of the Bill, which relate to failing to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability.

76. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 163(3) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 170(1) on introduction – Power to make further provision about the amount of penalties relating to failure to comply with an information notice, obstruction of an officer during an inspection or providing inaccurate information or documents as a result of an information notice.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

77. This order making power has been removed following amendment of the Bill at Stage 2 and replaced with the new regulation making power at section 180A. The power concerned enabled the Scottish Ministers by order to change the penalty amounts in sections 167, 168 and 169 of the Bill as introduced where it was felt that there had been a change in the value of money since the amounts were last set.

78. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 170(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 181(2) on introduction – Power to make further provision about penalties for failure to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

79. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 181G. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 181 of the Bill, which relate to failing to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014.

80. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 181(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 196(1) on introduction – Power to change the amount of a penalty arising from a third party failing to comply with a notice to supply contact details of a debtor

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

81. This order making power has been removed following amendment of the Bill at Stage 2 and replaced with the new regulation making power at section 180A. The power concerned enabled the Scottish Ministers by order to change the penalty amount in section 195 of the Bill as introduced where it was felt that there had been a change in the value of money since the amounts were last set.

82. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 196(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

REVENUE SCOTLAND AND TAX POWERS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM