

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Revenue Functions

General Functions

Section 317: Director's general Revenue functions

445. *Subsection (1)* sets out the qualifying condition which must be satisfied before the Director of the Assets Recovery Agency can take over general Revenue functions (defined at *section 323(1)*). The condition is that the Director must have reasonable grounds to suspect that income, profits or gains arising or accruing to a person (including a company) in respect of a chargeable period are chargeable to tax and arise or accrue as a result of that person's, or another's, criminal conduct. Criminal conduct is defined in *section 326*.
446. If this condition is satisfied, then *subsection (2)* allows the Director to serve a notice on the Board of the Inland Revenue that has the effect of vesting certain functions of the Inland Revenue in the Director.
447. The notice served on the Board of the Inland Revenue will specify a number of things. These will include adequate details to identify the relevant person or company, the chargeable periods in question and also the particular functions that the Director wishes to assume responsibility for. These may be some or all of the functions listed in *section 323(1)*. The notice will also specify the particular tax periods during which the income, profits or gains are suspected of arising as a result of criminal conduct.
448. *Subsection (3)* gives effect to the vesting of the Revenue functions in the Director, while *subsection (4)* allows the Director to serve on the Board a notice of withdrawal of the notice under *subsection (2)*. *Subsection (4)(b)* provides that such a notice must be served if the qualifying condition ceases to be satisfied.
449. *Subsection (6)* states that when a notice of withdrawal is served under *subsection (4)* above, the Director is divested of the functions specified in that notice and for the periods specified in that notice. *Subsection (7)* provides for the tax function to be vested in both the Director and the Inland Revenue officers concurrently. This will allow, among other things, routine work to be carried out by the Inland Revenue notwithstanding that the functions are also vested in the Director.
450. *Subsection (8)* provides that in circumstances where authorisation of the Board would normally be required for the exercise of a function it is not necessary if the function is vested in the Director.

Section 318: Revenue functions regarding employment

451. This section deals with two areas where there may be a mismatch between periods of account.

452. First, a company will account for income tax, National Insurance contributions and student loan repayments for which it is responsible as an employer for a year of assessment, but its own corporation tax liability will be determined by reference to its accounting period, which is usually different.
453. Second, self employed people are taxed by reference to years of assessment but Class 2 National Insurance contributions are calculated for each week of self employment and due quarterly in arrears.
454. This section ensures that the Director can only take over the functions which a company is responsible for as an employer and Class 2 National Insurance contributions of the self-employed where the relevant periods for those matters fall wholly within a period or periods for which the Director has served a notice under [section 317](#).

Section 319: Source of income

455. Assessments to income tax raised by the Inland Revenue are required to specify the source of the income in question, such as a particular trade. This is not the case for capital gains tax or corporation tax. This section enables the Director to raise income tax assessments where he discovers a loss of tax even where he cannot identify the source of the income in question.
456. The section does not extend to the assessments raised by the Inland Revenue, whose practice and powers will remain unaffected. Because of this, the section stipulates that when the case is transferred back from the Director to the Inland Revenue, any “no-source” assessment made by the Director is invalid.

Section 320: Appeals

457. This section provides a right of appeal to the Special Commissioners. All appeals against actions arising from the exercise by the Director of his Revenue functions will be to the Special Commissioners. The right of appeal is equivalent to those available to taxpayers subjected to decisions made by the Inland Revenue. *Subsection (1)* limits the right of appeal to hearings before the Special Commissioners, effectively excluding access to the General Commissioners.
458. *Subsections (2) to (5)* provide for the appointment, role and payment of specially qualified assessors to assist in the consideration of appeals against the exercise of the Director’s Revenue functions.
459. The Taxes Management Act 1970 enables the Lord Chancellor to regulate by secondary legislation the administration of the Special Commissioners’ hearings. *Subsection (4)* enables him to include provision about how specialist assessors may assist the Special Commissioners with a hearing of an appeal against the exercise of any of the Director’s revenue functions.

Inheritance Tax Functions

Section 321: Director’s functions: transfers of value

460. Inheritance tax is generally charged on a “transfer of value”, which is a disposition made by a person such that the value of their estate goes down. This section enables the Director to exercise inheritance tax functions if the qualifying condition is satisfied. The qualifying condition requires the Director to have reasonable grounds for believing that there has been a transfer of value and that the value transferred is in whole or in part attributable to criminal property. Criminal property is defined at [section 326](#). The section includes provisions equivalent to those in *subsections (2) to (4), (6) and (7) of section 317*.

Section 322: Director's functions: certain settlements

461. This section makes similar provision in cases of settlements of property which are not subject to a "qualifying interest in possession" (i.e. broadly, they are held on discretionary trusts).
462. In these cases, the Director may assume the Revenue's inheritance tax functions if he has reasonable grounds to believe that all or part of the property comprised in the settlement is criminal property.
463. The section includes provisions equivalent to those in *subsections (2) to (4), (6) and (7) of section 317*.

General

Section 323: Functions

464. This section lists the functions that may be vested in the Director if he specifies them in the notice he serves on the Board of the Inland Revenue under the sections above. It also lists functions that do not vest in the Director.

Section 324: Exercise of Revenue Functions

465. This section regulates the Director's exercise of his Revenue functions. *Subsection (2)* prohibits the Director from delegating his Revenue functions to anyone who is not a member of his staff.
466. *Subsections (3) and (4)* require the Director to apply any interpretation of the law as published by the Revenue Board and any concessions published by the Revenue Board. Also, he must take account of any other material published by the Board. *Subsection (5)* will enable the Board to obtain documents and information concerning the exercise by the Director of Revenue functions and his application of the law and concessions.

Section 325: Declarations

467. This section requires the Director and the members of the Agency staff authorised to exercise Revenue functions to make a declaration undertaking not to make any unlawful disclosure of information obtained in the exercise of his Revenue functions. The text of each declaration is reproduced at *Schedule 8* to the Act.

Section 326: Interpretation

468. This section provides definitions and meanings for some of the terminology used in Part 6 and in particular the terms "criminal conduct" and "criminal property." For the purposes of this Part, "criminal conduct" does not include an offence relating to a matter under the care and management of the Board of the Inland Revenue, for example, tax fraud.