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STATUTORY INSTRUMENTS

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**2002 No. 761**

**AGGREGATES LEVY**

**The Aggregates Levy (General) Regulations 2002**

<i>Made</i>	- - - -	<i>21st March 2002</i>
<i>Laid before the House of Commons</i>	- - - -	<i>21st March 2002</i>
<i>Coming into force</i>	- -	<i>1st April 2002</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 17(6), 23, 25(1) and (2), 30, 31(3), 37, 38, 39, 45 of and paragraphs 9(2) and (3) of Schedule 6, to paragraph 2 of Schedule 7 to, paragraphs 1, 9, 10 and 11 of Schedule 8 to the Finance Act 2001<sup>(1)</sup>, section 51 of the Finance Act 1997<sup>(2)</sup>, section 132 of the Finance Act 1999<sup>(3)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**

**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Aggregates Levy (General) Regulations 2002 and come into force on 1st April 2002.

**General interpretation**

2. In these Regulations except where the context requires otherwise—

“the Act” refers to sections 16 to 49 of and Schedules 4 to 10 to the Finance Act 2001 and any reference to a section of, Schedule to or paragraph of a Schedule to the Act refers to the appropriate section of, Schedule to or paragraph of a Schedule to that Act;

“aggregate” has the meaning given in section 17(1) of the Act;

“AL” refers to aggregates levy;

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(1) 2001 c. 9; section 48 provides that “the Commissioners” means the Commissioners of Customs and Excise in that Act.  
(2) 1997 c. 16.  
(3) 1999 c. 16.

“commercial exploitation” and “commercially exploited” are to be construed in accordance with section 19 of the Act;

“disposed of to landfill” is to be interpreted in accordance with sections 65 and 70(2) of the Finance Act 1996(4);

“exempt aggregate” means aggregate which is not taxable aggregate;

“exempt process” has the meaning given in section 18(2) of the Act;

“originating site” has the meaning given in section 20(1) of the Act;

“Part”, “regulation” or “regulations” refers to the appropriate Part, regulation or regulations of these Regulations;

“published notice” refers to a notice published by the Commissioners and not withdrawn or replaced by a further notice;

“registrable person” refers to a person who is registered or required to be registered under section 24 of and Schedule 4 to the Act other than a person who is exempt from the requirement of registration under regulations made under section 24(4) of the Act;

“Schedule” refers to the Schedule to these Regulations;

“taxable aggregate” is to be construed in accordance with section 17 of the Act;

“working day” excludes Saturday, Sunday and any bank or public holiday.

## PART II

### WEIGHT OF AGGREGATE

#### **Determination of the weight of aggregate**

3.—(1) Subject to regulation 4, the weight of any quantity of aggregate shall be determined by the use of a weighbridge at a site covered by section 19(2) of the Act.

(2) The terms and conditions attached to the use of a weighbridge shall be stipulated by the Commissioners in a published notice and shall include provisions relating to the records to be kept and the discounting of constituents (such as water).

(3) Where this regulation applies, the weight of any quantity of aggregate is to be determined at the time when it is first subjected to commercial exploitation.

4.—(1) Where the use of a weighbridge is not practicable, the weight of any quantity of aggregate is to be determined in accordance with a method approved by the Commissioners (“approved method”).

(2) Any such approval shall be in writing, shall be subject to such terms and conditions as the Commissioners may specify, including (but not limited to) the records to be kept, the time at which the weight of any quantity of aggregate is to be determined and the discounting of constituents (such as water).

(3) Where it appears to the Commissioners that an approved method is not being applied correctly or that it produces an inaccurate result, they may direct that it shall no longer have effect.

(4) In the absence of an approved method, the Commissioners may prescribe the method to be used.

(5) Any direction made or method prescribed under this regulation shall be in writing and shall take effect from a specified date.

## PART III

### ACCOUNTING, PAYMENT, RECORDS, TAX CREDITS, REPAYMENTS, SET-OFF, ETC.

#### Accounting periods

5.—(1) A registrable person shall be subject to accounting periods.

(2) In the case of a registered person, these shall be each three month period ending on the dates notified to him at any time by the Commissioners for this purpose.

(3) In the case of any other registrable person, these shall be each three month period ending on 31 March, 30 June, 30 September or 31 December.

(4) However, in such cases and subject to such conditions as may be stipulated by the Commissioners in a published notice, the Commissioners may vary the start, end and length of any accounting period.

#### Returns

6.—(1) A registrable person is obliged to make a return to the Commissioners covering each of his accounting periods.

(2) The registrable person is obliged to make that return no later than the last working day of the month immediately following the end of the period to which it relates.

(3) In the case of an accounting period that does not end on the last day of a month, the registrable person is obliged to make that return no later than the due day directed by the Commissioners.

(4) The Commissioners may allow the registrable person extra time in which to make that return.

(5) The registrable person must make that return in a form that is prescribed by the Commissioners in a published notice (“prescribed form”).

(6) Subject to his possession of an approved digital certificate, the registrable person may make that return in a prescribed form using an electronic version of the return.

(7) The registrable person must make that return by securing that it is delivered either to the address prescribed by the Commissioners in a published notice or to any other address that they may direct or allow.

(8) In this regulation—

“approved digital certificate” means a digital certificate which is accepted by the Commissioners as identifying a person for the purpose of their authorisation of his use of an electronic communication in respect of an assigned matter;

“assigned matter” has the meaning given in section 1(1) of the Customs and Excise Management Act 1979<sup>(5)</sup>;

“delivered” is to be construed according to the context so as to cover delivery by post and by means of an electronic communication as appropriate;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000<sup>(6)</sup>;

“electronic version” means the version which is submitted by means of an electronic communication.

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(5) 1979 c. 2.

(6) 2000 c. 7.

### **Content of returns**

7.—(1) The registrable person must declare in the return the AL due from him for the relevant accounting period, taking into consideration—

- (a) the AL due on the commercial exploitation of taxable aggregate—
  - (i) the time of which falls in that accounting period, and
  - (ii) for which he is liable to account; and,
- (b) any authorised or required adjustment or any correction of errors (see regulations 15(4), 18(3), 28 and 29).

(2) The registrable person must provide in the return accurate information about every matter that the prescribed form requires.

(3) The registrable person must sign, date and declare on the document forming his return that the information provided in it is true and complete.

(4) The registrable person must comply with paragraphs (1), (2) and (3) above in the manner prescribed by the Commissioners in a published notice.

(5) In this regulation, “sign” is to be construed according to the context so as to cover signatures in writing and signatures in electronic form as appropriate.

### **Payment**

8.—(1) A registrable person must pay to the Commissioners the amount of AL due from him for a given accounting period no later than the due date for the return for that period (see regulations 6(2), 6(3) and 6(4)).

(2) The registrable person must make that payment by securing that it is delivered either to the address or bank account prescribed by the Commissioners in a published notice or to any other address or bank account that they may direct or allow.

(3) The Commissioners may allow a registrable person who has made arrangements with them for the payment of any amount of AL due from him by means of direct debit an extra 7 days in which the payment may be made.

(4) The Commissioners shall only act pursuant to paragraph (3) above in accordance with such conditions as they shall stipulate in a published notice.

### **Records**

9.—(1) A registrable person is obliged to keep a record to be known as the “aggregates levy account” (periodic summary of AL due).

(2) A registrable person who makes a claim under regulations 12 and 15(1) (tax credits in respect of bad debts) is obliged to keep a record to be known as the “aggregates levy bad debts account”.

(3) A registrable person who makes a claim under regulations 13 and 15(1) (other tax credits) is obliged to keep a record to be known as the “aggregates levy tax credits account”.

(4) A record within this regulation must be kept in the manner stipulated in a published notice.

10. A registrable person is obliged to keep the following records—

- (a) his business and accounting records;
- (b) his stock record;
- (c) copies of all invoices issued by him;
- (d) all invoices received by him;
- (e) copies of all credit and debit notes or similar documents issued by him;

- (f) all credit and debit notes or similar documents received by him;
- (g) documentary evidence (including the workings and all relevant background documents) to explain and support any calculation of the weight of—
  - (i) taxable aggregate which has been subject to commercial exploitation; and
  - (ii) exempt aggregate;
- (h) documentary evidence regarding the adjustment of an entry concerning the amount of AL for which he is liable to account;
- (i) documentary evidence regarding any claim by him for a tax credit under regulation 12 (bad debts) including, as appropriate, evidence of insolvency or liquidation and, in each case, regarding any relevant surrounding circumstances;
- (j) documentary evidence regarding any claim by him for a tax credit under regulation 13 (other tax credits) including, as appropriate, evidence of export and end use and, in each case, regarding any relevant surrounding circumstances;
- (k) documentary evidence regarding amounts of aggregate which have been dumped or disposed of to landfill;
- (l) a record of the information he relies on in making each return pursuant to regulation 7;
- (m) any other record that may be directed by the Commissioners or stipulated in a published notice.

**11.**—(1) Subject to paragraph (2) below, a registrable person is required to preserve any record required by regulation 9 or 10 for a period of six years.

(2) The Commissioners may direct that any such record need only be preserved for such lesser period as they specify.

(3) For the purposes of paragraph (1) above, a record within regulation 9 need only be preserved in relation to events taking place not more than six years earlier.

#### **Bad debts: entitlement to tax credit**

**12.**—(1) Paragraph (3) below applies where—

- (a) a person has commercially exploited taxable aggregate within the meaning of section 19(1) (a) or (b) of the Act (“relevant commercial exploitation”) and has accounted for and paid the AL chargeable in respect of that relevant commercial exploitation;
- (b) that person has made a charge to a third party (“the customer”) in respect of that relevant commercial exploitation;
- (c) that person and the customer are not connected;
- (d) the whole or any part of the consideration which represents the charge for that relevant exploitation (“the consideration”) has been written off in his accounts as a bad debt; and
- (e) the customer has become insolvent or gone into liquidation.

(2) Any question whether a person is connected with another for the purposes of paragraph (1) above shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988(7).

(3) Subject to paragraph (4) below, the person shall be entitled to a tax credit in respect of the amount of AL accounted for and paid by him in respect of the outstanding amount (subject to the provisions of this Part including those provisions relating to the making of a relevant claim to the Commissioners).

(4) Where the charge made for the relevant commercial exploitation in question is less than twice the amount of AL accounted for and paid by a person in respect of that relevant commercial exploitation, the amount of the tax credit which he can claim under paragraph (3) above shall be restricted to half the outstanding amount.

(5) In this regulation and regulation 18—

“claim” refers to a claim in accordance with regulation 15 or 16 and “claimant” shall be construed accordingly;

“the outstanding amount” refers to—

- (a) if at the time of the claim no part of the consideration written off in the claimant’s accounts as a bad debt has been received, an amount equal to the amount of the consideration so written off;
- (b) if at that time any part of the consideration so written off has been received, an amount by which that part is exceeded by the amount of the consideration written off.

(6) In paragraph (5) above, “received” refers to receipt either by the claimant or by a person to whom a right to receive the whole or any part of the consideration written off has been assigned.

(7) Accordingly, subject to paragraph (4) above, the tax credit arising under this regulation shall be of an amount equal to such proportion of the AL accounted for and paid in respect of the relevant commercial exploitation as the outstanding amount forms of the total consideration.

(8) The whole or any part of the consideration shall be taken to have been written off as a bad debt when an entry is made in relation to that supply in the claimant’s aggregates levy bad debts account (see regulation 9(2)).

(9) Where the claimant owes an amount of money to the customer which can be set off, the amount of the consideration written off in the accounts shall be reduced by the amount so owed.

(10) Where the claimant holds in relation to the customer an enforceable security, the amount of the consideration written off in the claimant’s accounts shall be reduced by the value of that security.

(11) In paragraph (10) above, “security” refers to—

- (a) in England, Wales or Northern Ireland, any mortgage, charge, lien or other security;
- (b) in Scotland, any security (whether heritable or moveable), any floating charge and right of lien or preference and right of retention (other than a right of compensation or set-off).

### **Other tax credits: entitlement**

**13.—**(1) This regulation applies to a person who has commercially exploited taxable aggregate and who has accounted for the AL chargeable on that commercial exploitation.

(2) Such a person is entitled to a tax credit in respect of any AL accounted for in respect of that commercial exploitation where the taxable aggregate in question—

- (a) is exported or removed from the United Kingdom without further processing;
- (b) is used in an exempt process;
- (c) is used in any of the industrial or agricultural processes listed in the Schedule;
- (d) is disposed of (by dumping or otherwise) in any of the following ways:
  - (i) it is returned without further processing to its originating site or any site which is not its originating site but is registered under the same name;
  - (ii) it is disposed of to landfill;
  - (iii) it is gravel or sand and is used for beach restoration purposes at a site which is not its originating site.

(3) This regulation is subject to the provisions of this Part including those provisions relating to the making of a relevant claim to the Commissioners and the keeping of records including any records that are directed by the Commissioners or stipulated in a published notice.

(4) For the purposes of subsection (6) of section 17 of the Act, all the processes listed in the Schedule are prescribed for the purposes of that subsection.

### **Tax credits: general**

**14.** A tax credit shall only arise under regulation 12 or 13 if a claim is made by a person so entitled acting in accordance with regulation 15 or 16, as the case requires.

**15.—**(1) Subject to paragraph (6) below, a person shall claim any such tax credit by bringing it into account when he is accounting for AL due from him for any accounting period.

(2) Subject to paragraph (3) below, a person shall not be entitled to make such a claim unless he is in possession of the records required by paragraphs (i), (j) and (k) of regulation 10 as appropriate.

(3) In the case of a claim for a tax credit under regulation 13(2)(a) (export or removal from the United Kingdom), a person shall be entitled to make such a claim in accordance with paragraph (1) above despite the fact that he is not in possession of the records required by paragraph (j) of regulation 10 provided that he obtains such records within three months of his making such a claim. If not, he shall make the appropriate adjustment to cancel the tax credit claimed in his next AL return. Any further claim will be subject to paragraphs (1) and (2) above.

(4) Accordingly—

(a) the requirements of regulation 7 (content of returns), regulation 8 (payment) and regulation 9 (accounts) apply subject to paragraph (1) above; but

(b) paragraph (1) above applies subject to regulation 28 (corrections) and regulation 29 (corrections of errors not exceeding £2,000).

(5) A claim subject to paragraphs (1) to (4) above shall be regarded as a claim for repayment of AL for the purposes of section 32 of the Act (supplemental provisions about repayments, etc) (and see paragraph (7) below).

(6) Where the total tax credit claimed by a person exceeds the total of the AL due from him for the accounting period in question, the Commissioners shall repay to him an amount equal to the excess (but see regulations 30 and 31).

(7) Given the provision made by section 30(5) of the Act, this regulation has effect subject to section 32 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment etc).

**16.—**(1) Where the Commissioners have cancelled the registration of a person in accordance with paragraph 4 of Schedule 4 to the Act, and he is not a registrable person, the Commissioners shall repay to him the amount of any tax credit if they are satisfied that he has made a proper claim to them in writing for this purpose.

(2) A claim under paragraph (1) above may be combined with a claim under regulation 15(1) if appropriate.

(3) A person making a claim under paragraph (1) above must furnish to the Commissioners full particulars in relation to the tax credit claimed including (but not restricted to)—

(a) the return in which the relevant AL was accounted for;

(b) the amount of the AL in question and the date and manner of its payment to the Commissioners;

(c) the events by virtue of which the bad debt or other entitlement to a tax credit arose; and

(d) any supporting documentary or other evidence.

(4) Where the Commissioners are satisfied that a person who has made a claim in accordance with paragraphs (1) and (3) above is entitled to a tax credit and that he has not previously had the benefit of that credit, they shall repay to him an amount equal to the credit (but see regulations 30 and 31).

(5) The Commissioners shall not be liable to make any repayment under this regulation unless and until the person has made all the returns which he was required to make (and see regulations 30 and 31).

(6) Given the provision made by section 30(5) of the Act, this regulation has effect subject to section 32 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment etc).

### **Bad debts and other tax credits: supplementary provisions**

17.—(1) Where—

- (a) a claimant in relation to regulation 12 has engaged in a relevant commercial exploitation of taxable aggregate,
- (b) there exist one or more other matters in respect of which the claimant is entitled to a debt owed by the customer (whether or not they involve further charges in respect of the relevant commercial exploitation of taxable aggregate), and
- (c) a payment has been received by the claimant from or on behalf of the customer,

the payment shall be attributed to the relevant commercial exploitation in respect of which the claim is made under regulation 12 (“the appropriate commercial exploitation”) and the other matters in accordance with the rules set out in paragraphs (3) and (5) below.

(2) The debts arising in respect of the relevant commercial exploitation and the other matters are collectively referred to as debts in paragraphs (3) to (5) below.

(3) The payment shall be attributed to the debt that arose earliest and, if not wholly attributable to that debt, to the other debts in the order of the dates on which they arose.

(4) Attribution under paragraph (3) above shall not be made to the extent that the payment was allocated to a debt by the customer at the time of payment.

(5) Where—

- (a) the earliest debt and the other debts to which the whole of the payment could be attributed arose on the same day, or
- (b) the debts to which the balance of the payment could be attributed in accordance with paragraph (3) above arose on the same day,

the payment shall be attributed to each remaining debt according to the proportion that the debt in question contributes to the total remaining debt.

18.—(1) Where a person—

- (a) has received the benefit of a tax credit provided for by regulation 12 (bad debts), and
- (b) a payment—
  - (i) for the relevant commercial exploitation in question is subsequently received by him (or by a person to whom a right to receive the whole or any part of the consideration written off has been assigned), or
  - (ii) is attributed to that relevant commercial exploitation by virtue of regulation 17,
 that tax credit shall be withdrawn with effect from the time when sub-paragraph (b)(i) or (b)(ii) above is satisfied, as the case requires.



- (2) Where a person—
- (a) has received the benefit of a tax credit provided for by regulation 13 (tax credits other than bad debts), and
  - (b) it subsequently transpires that any relevant requirement of this Part is not complied with,
- that tax credit shall be withdrawn with effect from the time when he received that benefit.
- (3) Where a tax credit is withdrawn under this regulation—
- (a) the requirements of regulation 7 (content of returns), regulation 8 (payment) and regulation 9 (accounts) apply subject to this regulation; but
  - (b) this regulation applies subject to regulation 28 (corrections) and regulation 29 (corrections of errors not exceeding £2,000).
- (4) Paragraph (3) above applies subject to paragraph 3 of Schedule 8 to the Act (assessment for excessive repayment).

### **Form and manner of claim for repayment of overpaid AL**

**19.** A claim under section 31 of the Act (claim for repayment of AL which was not AL due) shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.

### **Tax credits and other repayments: unjust enrichment—reimbursement arrangements to be disregarded**

**20.** In this regulation and in regulations 21 to 26—

“claim” refers to a claim made under section 31 of the Act (claim for repayment of AL which was not AL due);

“reimbursement arrangements” refers to any arrangements for the purposes of the claim which—

- (a) are made by the claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons (recipients) who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners;

“relevant amount” refers to that part (which may be the whole) of the amount of the claim which the claimant has reimbursed or intends to reimburse to other persons (recipients).

**21.** For the purposes of section 32(2) of the Act (defence by the Commissioners that repayment by them of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they—

- (a) include the provisions described in regulation 22, and
- (b) are supported by the undertakings described in regulation 26.

**22.** The provisions referred to in regulation 21(a) are that—

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (however expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;

- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to the Commissioners;
- (e) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b) above; and
- (f) the records described in regulation 24 will be kept by the claimant and produced by him to the Commissioners in accordance with regulation 25.

**23.** The claimant shall, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of regulation 22(d) or 22(e) within 14 days of the expiry of the period of 90 days referred to in regulation 22(a).

**24.** The claimant shall keep records of the following matters—

- (a) the names and addresses of those persons (recipients) whom he has reimbursed or whom he intends to reimburse;
- (b) the total amount reimbursed to each such person (recipient);
- (c) the amount of interest included in each total amount reimbursed to each person (recipient);
- (d) the date that each reimbursement is made.

**25.—**(1) Where a claimant is given notice in accordance with paragraph (2) below he shall, in accordance with such notice, produce to the Commissioners the records that he is required to keep pursuant to regulation 24.

(2) A notice given for the purposes of paragraph (1) above shall—

- (a) be in writing;
- (b) state the date on which and the place and time at which the records are to be produced; and
- (c) be signed and dated by the Commissioners.

(3) Such a notice may be given before or after, or before and after, the Commissioners have paid the relevant amount to the claimant.

**26.—**(1) The undertakings referred to in regulation 21(b) shall be given to the Commissioners by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings shall be in writing and shall be signed and dated by the claimant.

(3) The undertakings shall be to the effect that—

- (a) at the date of the undertakings he is able to identify the names and addresses of those persons (recipients) whom he has reimbursed or whom he intends to reimburse;
- (b) he will apply the whole of the relevant amount repaid to him (without any deduction by way of fee, charge or otherwise) to the reimbursement in cash or by cheque of such persons (recipients) no later than 90 days after he receives that amount (unless he has properly reimbursed them already);
- (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such persons (recipients) no later than 90 days after he receives that interest;
- (d) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraph (b) or (c) above;
- (e) he will keep the records described in regulation 24; and

- (f) he will comply with any notice given to him in accordance with regulation 25 concerning the production of such records.

### **Correction of errors in AL returns**

**27.** A registrable person—

- (a) shall only be taken as providing full information in the prescribed or specified form and manner for the purposes of paragraph 9(3) of Schedule 6 to the Act (disclosure about inaccurate AL return),
- (b) with respect to any inaccuracy to which paragraph 9(1)(a) of Schedule 6 to the Act applies (civil penalty for misdeclaration or neglect in relation to inaccurate return),

if he delivers that information in writing to the Commissioners, or acts in accordance with regulation 29, at a time to which paragraph 9(3)(a) of Schedule 6 to the Act applies (no reason to believe enquiries being made into his AL affairs).

**28.—(1)** A registrable person shall correct any error made by him in accounting for AL or in connection with his AL account and, as appropriate, make any adjustment required by regulation 7(1)(b) (adjustment of AL returns).

(2) That correction or adjustment shall be made within such time and by means of such payment, financial adjustment, entry in accounts or other method as the Commissioners may require.

(3) This regulation has effect subject to, as the case requires—

- (a) the time limit applying to regulations 15(1), 18(1) and 18(2) (tax credits) (see regulations 15(7) and 18(4)—amounts paid more than three years before claim made and assessment subject to time limit in paragraph 5 of Schedule 8 to the Act);
- (b) a time limit of three years after the end of the accounting period in relation to which the error was made or the adjustment became required; or
- (c) any time limit for an assessment in relation to the error (see paragraphs 2(1), 2(2)(d), 3 and 4 of Schedule 5 to the Act).

**29.—(1)** This regulation applies by way of an exception to regulation 28 but only in relation to errors.

(2) Where a registrable person discovers that any return or returns which he has previously made is or are based on an under-calculation, he must correct the error or errors by adding the appropriate amount to the AL due for the accounting period in which the discovery is made under regulation 7(1)(b).

(3) Where a registrable person discovers that any return or returns which he has previously made is or are based on an over-calculation, he must correct the error or errors by deducting the appropriate amount from the AL due for the accounting period in which the discovery is made under regulation 7(1)(b).

(4) For the purposes of paragraphs (2) and (3) above—

“under-calculation” refers to the total amount of AL due in accordance with regulation 7(1) in the accounting period or periods to which the previous return or returns related which was not properly taken into consideration for that period or those periods as appropriate (“understated AL”);

“over-calculation” refers to the total amount that was wrongly taken as AL due in accordance with regulation 7(1) in the accounting period or periods to which the previous return or returns related and which was wrongly taken into consideration for that period or those periods as appropriate (“overstated AL”).

- (5) For the purposes of paragraph (4) above—
- (a) in reckoning the total amount constituting the under-calculation, an allowance must be made for any overstated AL;
  - (b) in reckoning the total amount constituting the over-calculation, an allowance must be made for any understated AL.
- (6) In any case, the total net amount of any under-calculation or over-calculation corrected under this regulation shall not exceed £2,000.
- (7) A registrable person making a correction under paragraph (2) or (3) above shall make proper allowance for that correction for the purposes of complying with regulation 9(1) (AL account) or 9(3) (AL tax credits account) as appropriate.
- (8) Where an error in a return has to any extent been corrected under this regulation—
- (a) that return shall be regarded as having been corrected to that extent, and
  - (b) the registrable person shall to that extent be taken to have provided full information with respect to the inaccuracy in the prescribed form and manner for the purposes of paragraph 9(3) of Schedule 6 to the Act (disclosure about inaccurate AL return).
- (9) A person shall not correct an error in a return (where that error is the result of an under-calculation or over-calculation) except in accordance with this regulation.
- (10) This regulation has effect subject to, as the case requires—
- (a) any requirement of the Commissioners under regulation 28(2), and
  - (b) any applicable time limit specified in regulation 28(3).

### **Set-off**

- 30.**—(1) This regulation applies where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of AL; and
  - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any AL (or other tax or duty) under their care and management.
- (2) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.
- (3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.
- (5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person in question and the Commissioners to pay the amount concerned shall be treated as having been discharged accordingly.

- 31.**—(1) This regulation applies where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax or duty (other than AL) under their care and management; and
  - (b) the Commissioners are under a duty, at the same time, to make a payment or repayment to that person of an amount or amounts of or in respect of AL.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person in question and the Commissioners to pay the amount concerned shall be treated as having been discharged accordingly.

**32.**—(1) Neither regulation 30 or 31 shall require any such amount as is mentioned in paragraph (1)(b) of either regulation (“the credit”) to be set off against any item mentioned in paragraph (1)(a) of either regulation (“the debit”) where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was applied; and
- (c) the liability to pay the debt either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business relevant for AL purposes at times before the procedure was so applied.

(2) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by sub-paragraphs (2) to (5) of paragraph 11 of Schedule 8 to the Act (insolvency procedures for the purposes of this regulation).

**33.** A reference in regulation 30 or 31 to an amount in respect of tax or duty includes a reference to an amount of any related penalty, surcharge or interest that may be recovered as if it was an amount of tax or duty.

## PART IV

### DEATH, INCAPACITY, INSOLVENCY, TRANSFERS

#### **Individuals: death or incapacity**

**34.**—(1) The Commissioners may, for AL purposes and subject to this regulation, treat a person who carries on relevant activities on behalf of an individual who has died or become temporarily incapacitated as if they were the same person.

(2) Such treatment may continue pending someone other than that individual being registered under section 24 of and Schedule 4 to the Act in relation to those activities or the incapacity ceasing.

(3) A person who carries on relevant activities in the circumstances described in paragraph (1) above must notify the Commissioners of this in writing and that notification must also include the date of death or the date and nature of the incapacity.

(4) This notification must be delivered to the Commissioners within 21 days starting with the day after the person begins carrying on the relevant activities.

(5) In this regulation, “relevant activities” refers to any activities in relation to which the individual in question is or was a registrable person.

## **Insolvency**

**35.**—(1) The Commissioners may, for AL purposes and subject to this regulation, treat a person who carries on relevant activities of a registrable person to whom an insolvency procedure is applied as if they were the same person.

(2) Such treatment may continue pending someone other than that registrable person being registered under section 24 of and Schedule 4 to the Act in relation to those activities or the insolvency procedure no longer being applied.

(3) A person who carries on relevant activities in the circumstances described in paragraph (1) above must notify the Commissioners of this in writing and that notification must also include the date when the insolvency procedure was first applied.

(4) This notification must be delivered to the Commissioners within 21 days starting with the day after the person begins carrying on the relevant activities.

(5) In this regulation—

“relevant activities” refers to any activities in relation to which the individual in question is or was a registrable person;

“registrable person” may include, as appropriate, the estate of a deceased individual.

(6) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by sub-sections (7) to (9) of section 37 of the Act (insolvency procedures for the purposes of this regulation).

## **Representatives: death, incapacity or insolvency**

**36.**—(1) If the Commissioners so require, a representative who controls the assets of a registrable person because of death, incapacity or the application of an insolvency procedure shall, for the purposes of AL and subject to this regulation, be treated as if he was the registrable person.

(2) Any requirement resulting from paragraph (1) above for the representative to pay AL shall only apply to the extent of the assets he controls.

(3) Any other requirement resulting from paragraph (1) above shall apply in the same way as it would have applied to the registrable person but for the death, incapacity or insolvency procedure.

(4) In this regulation “registrable person” may include, as appropriate, the estate of a deceased individual.

(5) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by sub-sections (7) to (9) of section 37 of the Act (insolvency procedures for the purposes of this regulation).

## **Transfers of going concerns**

**37.**—(1) Where—

(a) a business carried on by a person who is registered under section 24 of and Schedule 4 to the Act is transferred to another person as a going concern,

(b) the registration of the transferor has not been cancelled,

(c) the transfer requires that the transferor’s registration be cancelled and that the transferee either be registered for AL or notify the Commissioners that he is registrable for AL, and

(d) a written application for this purpose is made to the Commissioners by the transferor and transferee,

the Commissioners may, with effect from the date of the transfer, cancel the registration of the transferor and register the transferee in his place with the registration number previously allocated to the transferor.

(2) Should the Commissioners cancel the registration of the transferor and register the transferee in his place under paragraph (1) above then, in order to secure continuity in the application of the Act—

- (a) any liability of the transferor existing at the date of the transfer to make a return or account for or pay AL shall become the liability of the transferee;
- (b) any entitlement of the transferor, whether or not existing at the date of the transfer, to a tax credit or repayment under the Act or Part III of these Regulations shall become the entitlement of the transferee;
- (c) any other provision by or under the Act relating to AL that applied to the transferor before his registration was cancelled (or any such provision that continues to apply to the transferor after that cancellation) shall apply to the transferee; and
- (d) any circumstances relating to the application of the Act (or any provision made under the Act) to the AL affairs of the transferor before his registration was cancelled (or any such circumstances that continue to apply to the transferor after that cancellation) shall apply to the transferee.

(3) In addition to the provisions set out in paragraph (2) above, where—

- (a) the Commissioners cancel the registration of the transferor and register the transferee in his place under paragraph (1) above with effect from a date earlier than the accounting period in which they do so, and
- (b) either the transferor or the transferee has, in relation to any time on or after that date but before the start of that accounting period—
  - (i) made a return,
  - (ii) accounted for AL, or
  - (iii) claimed a relevant tax credit,

the matters referred to in sub-paragraphs (b)(i) to (b)(iii) above shall be treated as having been done by the transferee.

## **PART V**

### **PENALTIES**

**38.**—(1) A person who fails to comply with a requirement imposed on him by or under any of the following provisions of these Regulations shall be liable to a penalty of £250 for each such failure—

- (a) regulation 7(1), 7(2), 7(3) or 7(4);
- (b) regulation 8(2);
- (c) regulation 9(1), 9(2), 9(3) or 9(4);
- (d) regulation 10;
- (e) regulation 28(1) or 28(2);
- (f) regulation 29(7) or 29(9);
- (g) regulation 34(3) or 34(4);
- (h) regulation 35(3) or 35(4).

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(2) A specific act or omission shall attract only one such penalty if the circumstances are such that, but for this paragraph, it would attract more than one penalty.

## PART VI

### CONSEQUENTIAL AMENDMENTS

**39.** In regulation 2(1) of the Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997<sup>(8)</sup> under the meaning given for “relevant tax” insert—

“(g) aggregates levy;”.

New King’s Beam House,  
22 Upper Ground,  
London SE1 9PJ  
21st March 2002

*Ray McAfee*  
Commissioner of Customs and Excise

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<sup>(8)</sup> S.I.1997/1431, amended by S.I. 2001/838.



**SCHEDULE****Regulation 13****INDUSTRIAL AND AGRICULTURAL PROCESSES****A. Industrial processes**

<b>Code</b>	<b>Description</b>
001	Iron, steel and non-ferrous metal manufacture and smelting processing including foundry processes, investment casting, sinter plants and wire drawing.
002	Alloying.
003	Emission abatement for air, land and water.
004	Water and air filtration and purification.
005	Sewage treatment.
006	Production of energy.
007	Ceramic processes.
008	Refractory processes.
009	Manufacture of glass and glass products.
010	Manufacture of fibre glass.
011	Manufacture of man-made fibres.
012	Production of food and food processing e.g. sugar refining, production of gelatin.
013	Manufacture of plastics, rubber and PVC.
014	Chemical manufacturing e.g. soda ash, sea water magnesia, alumina.
015	Manufacture of precipitated calcium carbonate.
016	Manufacture of pharmaceuticals, bleaches, toiletries and detergents.
017	Aerating processes.
018	Manufacture of fillers for coating, sealants, adhesives, paints, grouts, mastics, putties and other binding or modifying media.
019	Manufacture of pigments, varnishes and inks.
020	Production of line markings for sports pitches.
021	Incineration.
022	Manufacture of desiccant.
023	Manufacture of carpet backing, underlay and foam.
024	Resin processes.

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<b>Code</b>	<b>Description</b>
025	Manufacture of lubricant additives.
026	Leather tanning.
027	Paper manufacture.
028	Production of art materials.
029	Production of play sand e.g. for children's sand pits.
030	Clay pigeon manufacture.
031	Abrasive processes: specialist sand blasting, iron free grinding (pebble mills) and sandpaper manufacture.
032	Use as proppant in oil exploration e.g. fracture sands and drilling fluids.
033	Flue gas desulphurisation and flue gas scrubbing.
034	Manufacture of mine suppressant.
035	Manufacture of fire extinguishers.
036	Manufacture of materials used for fireproofing.
037	Acid neutralisation.
038	Manufacture of friction materials e.g. automotive.

## **B. Agricultural processes**

<b>Code</b>	<b>Description</b>
039	Manufacture of additives to soil.
040	Manufacture of animal feeds.
041	Production of animal bedding material.
042	Production of fertiliser.
043	Manufacture of pesticides and herbicides.
044	Production of growing media.
045	Soil treatment, including mineral enrichment and reduction of acidity.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations make further provision for aggregates levy (AL) following the Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001<sup>(9)</sup>. These Regulations have effect from the introduction of AL on 1st April 2002.

2. Regulations 3 and 4 contain provisions relating to the determination of the weight of any quantity of aggregate.

3. The provisions made in respect of matters such as payment and record-keeping echo those in force for other taxes and duties administered by Customs and Excise. Accordingly, regulations 5 to 8 require relevant traders to make returns and pay the AL due from them in accordance with their allocated accounting periods (usually quarterly). Regulations 9 to 11 require traders to keep proper records for up to six years. Regulations 12 to 33 provide mechanisms for adjusting, correcting or properly establishing the amount of AL paid or due.

4. Regulations 34 to 37 again echo existing provisions in force for other taxes and duties. They cover representation in the case of death, incapacity or insolvency and the transfer of a business as a going concern.

5. A breach of these Regulations may lead to a penalty under regulation 38 or, in certain cases where so specified, under sections 16 to 49 of and Schedules 4 to 10 to the Finance Act 2001.

6. Regulation 39 is included to allow the levying of distress for the recovery of AL<sup>(10)</sup>.

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<sup>(9)</sup> S.I. 2001/4027.

<sup>(10)</sup> AL is made a “relevant tax” for the purposes of S.I. 1997/1431. For enforcement by diligence in Scotland, see section 52 of the Finance Act 1997 (c. 16) as amended by paragraph 7 of Schedule 7 to the Finance Act 2000 (c. 17) and by paragraph 16 of Schedule 5 to the Finance Act 2001 (c. 9).