

EXPLANATORY NOTE

AMENDMENTS 28-31 TO CLAUSES 166 & 167: OFFENCE OF FAILING TO PROVIDE SECURITY OR APPOINT REPRESENTATIVE AND FRAUDULENT EVASION

SUMMARY

1. These amendments correct a technical deficiency to ensure that offences under this clause are expressed in a manner that is consistent with penalty provisions introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) and continue to attract financial penalties within a defined scale. Without these amendments the offences could otherwise attract a limitless fine in all cases as a consequence of penalty provisions introduced by LASPO.

DETAILS OF THE AMENDMENTS

2. Amendment 28 amends subsection (2) to ensure that the reference to “the standard scale” applies only in connection with a person convicted of such an offence in Scotland or Northern Ireland.

3. Amendment 29 provides that where a person is found guilty of an offence committed before the implementation of section 85(1) of LASPO a penalty on the standard scale will apply regardless of where in the United Kingdom the offence is committed.

4. Amendment 30 amends subsection (2) to replace the reference to “the statutory maximum” with a reference to “£20,000” in cases where a person is convicted of the offence in England and Wales.

5. Amendment 31 provides that section 85(1) of LASPO will not apply in relation to offences under subsection (1) and ensures that offences committed before then will continue to be liable to a penalty of the statutory maximum.

BACKGROUND NOTE

6. Clause 166 makes provision for penalties in connection with a person’s failure to meet certain obligations. On summary conviction, a person who is guilty of such an offence may be liable to a fine “not exceeding level 5 on the standard scale”. Under section 85(1) of LASPO penalties of level 5 on the standard scale will, in England and Wales, be replaced by

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finer of an unlimited amount. Without this amendment the penalty provisions at subsection (2) would be expressed in terms which are outdated.

7. Clause 167 makes provision for penalties in connection with fraudulent evasion of certain gambling duties. On summary conviction, a person who is guilty of such an offence may be liable to a fine that is the greater of a fixed amount (the statutory maximum) or three times the duty unpaid. If section 85(1) of LASPO was allowed to operate the “statutory maximum” will be interpreted as an unlimited amount. This will not make sense when read with the alternative of three times the duty unpaid, whichever is the greater. Without this amendment the penalty provisions at subsection (2) would be read as a fine of an unlimited amount, or three times the duty unpaid, whichever is the greater. This would not be consistent with HMRC policy.

If you have any questions about this change, or comments on the legislation, please contact Brian O’Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk).

Thursday 5 June 2014

PUBLIC BILL COMMITTEE

Mr David Gauke

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Clause 166, page 120, line 19, after “to” insert—

- “(a) in England and Wales, a fine, or
- (b) in Scotland or Northern Ireland,”

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Clause 166, page 120, line 19, at end insert—

- “() The reference in subsection (2)(a) to a fine is to be read as a reference to a fine not exceeding level 5 on the standard scale in relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.”

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Clause 167, page 120, line 27, after “exceeding” insert—

- “(i) in England and Wales, £20,000 or, if greater, three times the duty which is unpaid or the payment of which is sought to be avoided, or
- (ii) in Scotland or Northern Ireland,”

Mr David Gauke

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Clause 167, page 120, line 40, at end insert—

- “(5) Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 does not apply in relation to the offence under subsection (1), but where such an offence is committed before section 85(1) comes into force the reference in subsection (2)(b)(i) to £20,000 is to be read as a reference to the statutory maximum.”