

**EXPLANATORY NOTE**

**CLAUSE 96: PENALTY FOR ASSISTING IN PREPARATION OF  
INCORRECT RETURN ETC**

**SUMMARY**

1. This clause provides a penalty of a maximum of £3,000 for assisting in the preparation of an incorrect return, information or other document.

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**DETAILS OF CLAUSE**

2. The clause applies to a person who assists in the preparation or delivery of:
  - any return, or
  - information, or
  - other document.
3. Which he knows:
  - will be or will likely to be used for the purpose of tax, and
  - to be incorrect.
4. Tax in this clause takes its definition from clause 121 and is stamp duty land tax.
5. Where the clause applies the person is liable to a maximum penalty of £3,000.

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**BACKGROUND**

6. The clause is based on section 99 TMA, and for stamp duty land tax the Inland Revenue will follow established procedure for section 99 TMA.

**EXPLANATORY NOTE**

**CLAUSE 97: POWER TO ALLOW FURTHER TIME AND  
REASONABLE EXCUSE FOR FAILURE**

**SUMMARY**

1. This clause provides that if the Inland Revenue give further time for anything to be done, then the person shall not be treated as failing to meet a time limit if the thing is done within the further time allowed.
2. It also provides that where there is a reasonable excuse not to do anything required for stamp duty land tax, there is no failure to do it within a time limit until the excuse ceases and the thing is done without unreasonable delay after the excuse ceases.

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**DETAILS OF CLAUSE**

3. Subsection (1) deals with cases where further time has been allowed by the Inland Revenue. It provides that where further time is allowed to do anything.
4. Subsection (2) deals with reasonable excuse. If there is a reasonable excuse not to do anything with a time limit then there is no failure to meet the time limit until the excuse ceases and if the thing is done after the excuse cease without unreasonable delay.

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**BACKGROUND**

5. Providing for extra time to be given by the Inland Revenue and for the exception for reasonable excuse will allow flexibility in the operation of the fixed penalties which matches that for income tax and corporation tax.
6. On appeal against a fixed penalty if the excuse is not accepted by the Inland Revenue the matter can be taken before the appeal commissioners to decide if the excuse is reasonable.
7. Guidance on what in the view of the Inland Revenue will constitute a reasonable excuse will be issued prior to introduction of stamp duty land tax and will be based on similar guidance for income tax and corporation tax.

**EXPLANATORY NOTE**

**CLAUSE 98: ADMISSIBILITY OF EVIDENCE NOT AFFECTED BY  
OFFER OF SETTLEMENT ETC**

**SUMMARY**

1. This clause deals with the admissibility of evidence in tax proceedings where the taxpayer has been told about the policy of the Board of Inland Revenue to accept a money settlement if a full confession is made. It incorporates changes in clause 203

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**DETAILS OF CLAUSE**

2. Subsection (1) deals with the admissibility of statements and documents in proceedings (defined in subsection (2)). It provides that such statements and documents are not inadmissible in court just because the defendant has been told that the Board of Inland Revenue will accept a monetary settlement (and will not pursue a criminal prosecution) if a full confession is made, or that the extent to which information is freely disclosed will be taken into account in arriving at the amount of any penalty.

3. Subsection (2) defines proceedings. These are any criminal proceedings, and proceedings for recovery of tax and any proceedings for a penalty or a related appeal.

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**BACKGROUND**

4. This clause is based on section 105 TMA as amended by clause 203 of this Bill.

**EXPLANATORY NOTE**

**CLAUSE 99 AND SCHEDULE 14: GENERAL PROVISIONS ABOUT PENALTIES**

**SUMMARY**

1. This clause provides for Schedule 14 (which deals with the determination of penalties and related appeals), the mitigation of penalties by the Board of Inland Revenue, and that nothing in the provisions of Part 4 affect any criminal proceedings.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) provides for Schedule 14.
3. Subsection (2) gives the Board of Inland Revenue the power to mitigate penalties. It is based on section 102 TMA.
4. Subsection (3) prevents anything in Part 4 of this Bill affecting criminal proceedings for an offence. It is based on section 104 TMA.

**DETAILS OF THE SCHEDULE**

5. Paragraph 1 applies this Schedule to penalties under Part 4 of this Bill.
6. Paragraph 2 provides for the determination of penalties by an officer of the Board. It is based on sections 100, 100A(2) and 113(1D) TMA. It also provides that:
  - notice of the determination of the penalty must be served on the person liable
  - the details that the notice must include
  - the determination is final except unless the Inland Revenue decide it is excessive, or on appeal
  - the penalty is due and payable within 30 days from the date of issue of the notice.
  - administrative matters regarding penalties may be delegated by officers within the Inland Revenue.

7. Paragraph 3 deals with the alteration of a penalty determination. This allows an authorised officer of the Inland Revenue to alter a penalty determination if it is excessive or make a further determination if it is insufficient. It is based on section 100 (4), (5) and (6) TMA.

8. Paragraph 4 clarifies the liability of personal representatives where a person who is liable to a penalty has died. It is based on section 100A(1) TMA.

9. Paragraph 5 provides for an appeal against a penalty determination. It is based on section 100B TMA. It sets out who the appeal is to, what form it is to take and a time limit of 30 days. Appeals out of time can be brought with the consent of the Board or Commissioners. The notice of the appeal must specify the grounds but any hearing is not limited to those grounds. On appeal the commissioners may set the determination aside, confirm it, or modify the amount of it.

10. Paragraph 6 provides for a further appeal from decisions of the Commissioners on a point of law or against the amount of a penalty. It is based on section 100B(3) TMA.

11. Paragraph 7 deals with penalty proceedings before the court. Such proceeding may only be brought by the Board and may only be brought where the liability arises by reason of fraud. The covers different types of court within the United Kingdom. It is based on section 100D TMA.

12. Paragraph 8 provides time limits for the determination of penalties. There are exceptions but the general time limit is 6 years after the date on which the penalty was incurred. Where the penalty is tax geared, the time limit is three years after the final determination of the amount of the tax. There is a separate rule where the liable person has died and for penalties under clause 96. It is based on section 103 TMA.

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## **BACKGROUND**

13. This clause and the Schedule is based on administrative provisions in TMA dealing with the determination of civil penalties by the Inland Revenue.

14. Penalties can be incurred under the following provisions of this Part:

- Schedule 10 paragraphs 3, 4,5,8,11,16.
- Schedule 11 paragraph 3,6 ,11
- Clause 93(3), (4) or (6)
- Clause 96

**EXPLANATORY NOTE**

**CLAUSE 100: COMPANIES**

**SUMMARY**

1. This clause provides the definition of "company" for the purposes of stamp duty land tax and specifies who is responsible for notifying and paying stamp duty land tax.

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**DETAILS**

2. Subsection (1) defines "company" for the purposes of stamp duty land tax.

3. Subsection (2) provides that a company should act through the proper officer of the company, or - except in a liquidation - another person authorised to act for the company.

4. Subsection (3) states that any document served under stamp duty land tax is given effect by being serviced on the proper officer.

5. Subsection (4) provides that where tax is due from a company that is not a body corporate or is incorporated outside the UK, it may be recovered from the proper officer.

6. Subsection (5) allows the proper officer to retain company monies in order to pay stamp duty land tax, and where he is not reimbursed, entitles him to be indemnified by the company in respect of the liability.

7. Subsections (6) and (7) define "proper officer".

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**BACKGROUND**

8. This clause is required to define a "company" for the purposes of stamp duty land tax and to ensure that stamp duty land tax is correctly administered where the purchaser is a company.

**EXPLANATORY NOTE**

**CLAUSE 101: UNIT TRUST SCHEMES**

**SUMMARY**

1. This clause provides that a unit trust scheme is treated as if it were a company for the purposes of paying stamp duty land tax when it acquires land. And that issues, surrenders and transfers of units are not within the scope of stamp duty land tax.

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**DETAILS**

2. Subsection (1) provides that stamp duty land tax applies to a unit trust scheme as if the trustees were a company and the rights of the unit holders were shares in that company.
3. Subsection (2) sets out how umbrella schemes will be treated.
4. Subsection (3) defines an "umbrella scheme".
5. Subsection (4) defines "unit trust scheme" and "unit holder".
6. Subsection (5) provides a regulation making power.
7. Subsection (6) applies section 469A ICTA to stamp duty land tax.
8. Subsection (7) provides that a unit trust scheme is not treated as a company for the purposes of section 54 or parts 2 or 3 of Schedule 6.

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**BACKGROUND**

9. This clause provides that unit trust schemes are treated as if they were companies for the purposes of stamp duty land tax, other than for the market value charge on connected persons, and group and reconstruction reliefs. This means that when unit trust schemes buy land they are liable for stamp duty land tax in the same way as a company. Issues and surrenders of units in a unit trust scheme and transfers of such units will continue to be subject to stamp duty reserve tax.

**EXPLANATORY NOTE**

**CLAUSE 102: OPEN-ENDED INVESTMENT COMPANIES**

**SUMMARY**

1. This clause provides a regulation making power which allows the Treasury to make regulations to ensure that the stamp duty land tax provisions apply to open-ended investment companies in the same way as they apply to unit trust schemes.

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**DETAILS**

2. Subsection (1) provides a regulation making power for open-ended investment companies.

3. Subsection (2) provides that the regulations may make specific provision for umbrella schemes.

4. Subsection (3) provides that the regulations may contain such incidental, supplementary, consequential and transitional provisions as the Treasury thinks fit.

5. Subsection (4) contains definitions of "open ended investment company", "prescribed", "unit trust scheme" and "umbrella scheme".

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**BACKGROUND**

6. This clause provides a regulation making power for open-ended investment companies. When regulations are made and laid, the result will be that open-ended investment companies will be treated in the same way as unit trust schemes for stamp duty land tax.

**EXPLANATORY NOTE**

**CLAUSE 103: JOINT PURCHASERS**

**SUMMARY**

1. This clause sets out the treatment of joint purchasers (other than trustees and partners). Such joint purchasers have joint and several liability to comply with the stamp duty land tax regime.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) confirms that this clause applies to land transactions entered into by two or more purchasers who are jointly entitled to the interest acquired.

3. Subsection (2) sets out the general rules:

- any obligation imposed on a purchaser by the stamp duty land tax regime is imposed on the purchasers jointly but may be discharged by any one of them, so that, for example, only one land transaction return is required, although it will be signed on behalf of all purchasers.
- anything required or authorised by the stamp duty land tax regime to be done in relation to the purchasers must be done in relation to all of them, so that, for example, the Inland Revenue would request further information from all joint purchasers.
- any liability of a purchaser under the stamp duty land tax regime is joint and several, so that, for example, a failure to submit a return and pay stamp duty land tax will attract interest and penalties which can be recovered from all or any of the joint purchasers

4. Subsection (3) confirms that only one land transaction return is required from joint purchasers.

5. Subsection (4) applies where notice of enquiry into a return is given. It obliges the Inland Revenue to keep all purchasers informed about action it is taking, although requests for information or documents might be directed at only some of them. Any one of the purchasers can apply for a closure notice.

6. Subsection (5) applies where a determination or discovery assessment is made. This will not be effective against any of the purchasers unless notice has been given to all of them (provided their identity is known).

7. Subsection (6) applies where an appeal arises. It ensures any of the purchasers can exercise a right of appeal at any time, but that an appeal can only be settled with the agreement of all the purchasers, and a decision binds them all.

8. Subsection (7) makes this clause subject to the provisions relating to trustees and partnerships.

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### **BACKGROUND**

9. This clause provides for the administration of stamp duty land tax where a property is purchased jointly by more than one person, except where the arrangement arises as a result of a partnership or trust. It is usually the policy for income tax, corporation tax and capital gains tax that profits, gains and losses should be divided between joint purchasers, and each person's share be taken into account in the separate tax affairs of each of the purchasers. Indeed section 282A TA 1988 provides that income arising from property held jointly by spouses is assumed to accrue in equal shares, unless the spouses declare otherwise.

10. The policy for stamp duty land tax, however, is to aim for a single notification for each transaction. The Inland Revenue does not want two purchasers buying jointly to have to report half a transaction each. This rule applies even if the joint purchasers enter into the transaction as, in England and Wales, tenants in common (so that on the death of a joint owner his share in the property passes to his estate and not to other owner(s)).

11. The general principles arising from this approach are that the obligations to notify, pay and respond to enquiries etc. fall jointly and severally on all the purchasers, but any one of them may take responsibility for fulfilling those obligations. The Inland Revenue are bound to inform all the purchasers (of whom they are aware) of any action the Inland Revenue are taking (such as opening an enquiry or requesting information). Any one of the purchasers may exercise a right of appeal even if they did not originally take on the responsibility for fulfilling the notification and payment obligations (although reliance on another party would not be sufficient reason to appeal). An appeal decision binds all the purchasers.

**EXPLANATORY NOTE**

**CLAUSE 104 AND SCHEDULE 15: PARTNERSHIPS**

**SUMMARY**

1. This clause and the Schedule set out the responsibilities of partners, how stamp duty land tax applies in relation to the acquisition of interests in land by partners or partnerships, and excludes certain transactions relating to partnerships from stamp duty land tax.

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**DETAILS OF THE CLAUSE AND SCHEDULE**

2. Clause 104 introduces Schedule 15.
3. Paragraph 1 defines "partnership".
4. Paragraph 2 provides that assets of a partnership are treated as held by the partners, whether or not a partnership has legal personality or is a body corporate.
5. Paragraph 3 provides that where there is a change in the membership of a partnership, the partnership shall be treated as continuing as long as one partner remains.
6. Paragraph 4 provides that a partnership is not to be regarded as a unit trust scheme or an open-ended investment company for the purposes of stamp duty land tax.
7. Paragraph 5 provides that Part 2 of the Schedule applies to transactions made by or on behalf of the members of a partnership, other than transactions to which Part 3 of the Schedule applies.
8. Paragraph 6 defines "responsible partners" in relation to a transaction and specifies that anything which should be done by the purchaser under a transaction is required to be done by or in relation to all the responsible partners.
9. Paragraph 7 provides that the responsible partners shall be jointly and severally liable for stamp duty land tax and sets out the rules for the responsible partners' liability to tax, interest and penalties.
10. Paragraph 8 provides that a representative partner may act for a responsible partner and defines "representative partner".

11. Paragraph 9 defines the transactions to which Part 3 of the Schedule relates and provides that transactions which fall within Part 3 are excluded from stamp duty land tax. It also defines an interest in land and provides that a transfer of an interest in land includes the grant or creation of an interest, the variation of an interest, and the surrender, release or renunciation of an interest.
12. Paragraph 10 provides that transactions by which an existing partner transfers an interest in land to a partnership, or a person transfers an interest in land into a partnership in return for an interest in the partnership are excluded from stamp duty land tax.
13. Paragraph 11 provides that the acquisition of an interest in a partnership is excluded from stamp duty land tax.
14. Paragraph 12 provides that transfers of land to a person in return for his leaving a partnership, or reducing his interest, are excluded from stamp duty land tax. It also defines the circumstances in which there is a transfer of an interest in land from a partnership to a partner.
15. Paragraph 13 provides that any transaction which is excluded from stamp duty land tax under Part 3 of the Schedule is not treated as a land transaction. It also provides that all of the provisions relating to stamp duty will continue to apply to transactions under Part 3 of the Schedule.
16. Paragraph 14 defines "partnership property".

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## **BACKGROUND**

17. This Clause and Schedule cover the acquisition of chargeable interests by partners and their responsibility for paying stamp duty land tax. It also provides that stamp duty land tax does not apply to transactions where land is transferred to a partnership by a partner, a partnership interest is acquired or where land is removed from a partnership by a partner or former partner in return for the release of all or part of his partnership share. It provides for the provisions of stamp duty to continue to apply to these transactions.

**EXPLANATORY NOTE**

**CLAUSE 105 AND SCHEDULE 16: TRUSTEES**

**SUMMARY**

1. This clause and schedule set out the responsibilities of trustees and how stamp duty land tax applies in relation to interest in trusts, and to the acquisition of a chargeable interest through the exercise of a power of appointment or a discretion.

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**DETAILS OF THE CLAUSE AND SCHEDULE**

2. Clause 105 introduces Schedule 16.
3. Paragraph 1 defines settlement and bare trust/nominee.
4. Paragraph 2 provides for beneficiaries of trusts in Scotland and other countries to be treated as having an equitable interest in trust property if that would be the result under English law.
5. Paragraph 3 provides that where a person acquires a chargeable interest as a bare trustee or nominee the acquisition is treated as being the acquisition of the person the bare trustee or nominee acts for.
6. Paragraph 4 provides that trustees are purchasers where they acquire a land interest, and that they are treated as acquiring the whole interest (this means that there is no apportionment of consideration, and only a single land transaction, if others acquire an equitable interest in the same transaction).
7. Paragraph 5 sets out the rules for trustees' liability to tax, interest and penalties.
8. Paragraph 6 sets out the procedure for notification of an enquiry to trustees.
9. Paragraph 7 provides that payment for a power of appointment or discretion to be exercised is consideration for the acquisition of a land interest through the exercise of the power or discretion.

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**BACKGROUND**

10. This Clause and Schedule cover the acquisition of chargeable interests by trustees, their responsibility for making returns, and how the enquiry powers will relate to them. It provides that when bare trustees and nominees acquire a chargeable interest it is treated as an acquisition by the person they act for, but where trustees of a non-bare trust acquire a chargeable interest the trustee is treated as the purchaser.

11. The acquisition of an equitable interest in land is a land transaction, so if the beneficiary of a trust acquires such an interest that is a land transaction. However, that is not the case in Scotland and other jurisdictions outside England. So the Schedule provides that beneficiaries of trusts in Scotland, or other countries or territories outside the UK, are treated as having an equitable interest in trust property if that would be the result under English law, and this makes the position consistent for beneficiaries whatever law governs the trust.

12. The Schedule also provides that consideration paid for the exercise of a power or discretion is treated as consideration for any land transaction that results from that exercise.

**EXPLANATORY NOTE**

**CLAUSE 106: PERSONS ACTING IN A REPRESENTATIVE  
CAPACITY ETC**

**SUMMARY**

1. This clause applies the provisions of the stamp duty land tax legislation to persons acting in a representative capacity.

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**DETAIL OF CLAUSE**

2. Subsection (1) concerns trustees and guardians etc of incapacitated persons. It follows section 72 TMA.

3. Subsection (2) provides that the obligations of a minor (i.e. infant) default to the parent or guardian of that minor. It draws on section 73 TMA.

4. Subsection (3) concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations under this Part arising from a land transaction entered into by the deceased person before he died. It is drawn from section 74 TMA.

5. Subsection (4) concerns receivers appointed by a UK court. It follows section 75 TMA.

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**BACKGROUND**

6. This provision deals with how stamp duty land tax will apply to a person acting in a representative capacity. Provision is made where a person acts for an incapacitated person, a minor, a deceased person or a person whose assets are under the direction and control of the court. The general rule is that the person acting in the representative capacity will be responsible for complying with the requirements of stamp duty land tax.

**EXPLANATORY NOTE**

**CLAUSE 107: CROWN APPLICATION**

**SUMMARY**

1. This clause provides that the stamp duty land tax regime will apply to public offices and Government departments (other than the obligation to pay stamp duty land tax if that stamp duty land tax would ultimately be borne by the Crown) and exempts transactions where the purchaser is a listed Government or Parliamentary body. The Revenue's power to enter premises with a warrant to obtain information do not apply to premises occupied for the purposes of the Crown.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) confirms that all the requirements of the stamp duty land tax regime apply to public offices of the Crown and government departments in the same way as to private individuals and corporations. However, these offices and departments are not required to pay stamp duty land tax if the tax would ultimately be borne by the Crown.

3. Subsection (2) exempts the listed Governmental and Parliamentary bodies from the payment of stamp duty land tax.

4. Subsection (3) disapplies the Revenue's power to enter premises with a warrant to obtain information if those premises are occupied for the purposes of the Crown.

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**BACKGROUND**

5. This clause relates to government departments and public offices of the Crown including the National Assembly for Wales and the Northern Ireland Assembly Commission and the Scottish Executive. It does not extend to Local Authorities or similar bodies.

6. This clause does not apply to the acquisition of private property for the sovereign.

7. The Crown exemption avoids the payment of "circular money".

**EXPLANATORY NOTE**

**CLAUSE 108: LINKED TRANSACTIONS**

**SUMMARY**

1. This clause defines ‘linked transactions’. Under clause 55(4), for linked transactions, the rate of tax will be determined by reference to the aggregate chargeable consideration. The clause also seeks to streamline administration where two or more transactions are “linked” and have the same effective date.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) defines ‘linked transactions’ as transactions forming part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or persons connected with them.

3. Subsection (2) defines ‘connected persons’ with reference to ICTA.

4. Subsection (3) provides that, at the option of the purchaser(s), linked transactions with the same effective date can be reported as a single notifiable transaction, with a single return.

5. Subsection (4) provides that where this is done, all the purchasers, if there are more than one, will be treated as joint purchasers (see clause 103).

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**BACKGROUND**

6. The clause defines ‘linked transactions’. This definition is used in clause 55(4), which states that the rate of tax for linked transactions will be determined by reference to the aggregate chargeable consideration. The clause also provides that linked transactions can be reported on a single return and imports the rules relating to joint purchasers if linked transactions with joint purchasers are reported on a single form.

**EXPLANATORY NOTE**

**CLAUSE 109: GENERAL POWER TO VARY THIS PART BY REGULATIONS**

**SUMMARY**

1. This clause provides a power to allow avoidance devices to be countered as they arise and to allow reliefs to be implemented with immediate effect. Under the power, regulations may be made to vary stamp duty land tax on any land transaction with immediate effect, subject to approval by a House of Commons vote. Any regulations made using the power will be temporary, and they will not stand unless included within a subsequent Finance Bill.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) provides a power for regulations to be made to vary the application of stamp duty land tax to any land transaction.

3. Subsection (2) provides that the power allows the alteration of the descriptions of land transactions that are chargeable or notifiable and the descriptions of land transactions on which stamp duty land tax is chargeable at any existing rate or amount.

4. Subsection (3) prevents the power being used to vary rates or thresholds, other than in relation to land transactions altered in accordance with subsection (2) above.

5. Subsection (4) provides that this section is subject to clause 110 (approval of regulations by House of Commons).

6. Subsection (5) provides that the regulations will be temporary, with a maximum life of 18 months.

7. Subsection (6) provides a power to make transitional, supplementary and incidental provisions.

8. Subsection (7) provides for the power to be exercised at any time after Royal Assent to this Act.

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**BACKGROUND**

9. This provision provides a mechanism for stamp duty avoidance devices to be countered as they arise with immediate effect. And it allows the Government to bring in reliefs from stamp duty land tax without waiting for the next Finance Bill.

**EXPLANATORY NOTE**

**CLAUSE 110: APPROVAL OF REGULATIONS UNDER GENERAL POWER**

**SUMMARY**

1. This clause ensures that any regulations made under clause 109 are subject to approval by a House of Commons vote.

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**DETAILS**

2. Subsection (1) applies an affirmative resolution procedure to regulations under clause 109.
3. Subsection (2) provides that regulations made under this power cease to have effect if the House of Commons does not approve them within 28 days.
4. Subsection (3) provides that regulations made under this power cease to have effect if the House of Commons rejects the regulations within the same 28 day period.
5. Subsection (4) specifies how the 28-day period should be calculated if Parliament is not in session.
6. Subsection (5) provides that if the regulations cease to have effect under this clause, this does not affect anything that has been done which relies on the regulations.

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**BACKGROUND**

7. This provision ensures that regulations made under the power provided in clause 109 are subject to a debate in the House of Commons within 28 days of their introduction. If the regulations are not then approved, they will cease to have effect.

**EXPLANATORY NOTE**

**CLAUSE 111: CLAIM FOR REPAYMENT IF REGULATIONS UNDER  
GENERAL POWER NOT APPROVED**

**SUMMARY**

1. This clause provides for repayments to be made where regulations under clause 109 are not approved.

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**DETAILS**

2. Subsection (1) provides for the repayment of any tax, interest or penalties paid under the regulations if the regulations are not approved.
3. Subsection (2) provides that interest will be paid on any repayment made under this clause.
4. Subsection (3) states that a claim for repayment must be made within two years of the effective date of the transaction for which the repayment is being claimed.
5. Subsection (4) provides for the Inland Revenue to vary by regulations the time limit for making a claim, or to vary any other conditions that must be met before a repayment is made.

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**BACKGROUND**

6. If regulations under clause 109 are not approved, then, subject to a claim for repayment being made, any tax paid under the regulations will be repaid by the Inland Revenue.

**EXPLANATORY NOTE**

**CLAUSE 112: POWER TO AMEND CERTAIN PROVISIONS BEFORE IMPLEMENTATION**

**SUMMARY**

1. This clause provides for an alternative charging structure for new leases to be substituted for the proposed structure set out in the Bill, and for the rate band thresholds for the main charge to be changed at any time between Royal Assent and the day stamp duty land tax is implemented.

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**DETAILS**

2. Subsection (1) limits the scope of any regulations made under this power to amending Schedule 5 (which sets out the charging structure for new leases) and to the thresholds specified in the table in subsection (2) of clause 55.

3. Subsection (2) provides for the regulations to make consequential amendments to Schedule 6 (which sets out the relief for property in disadvantaged areas).

4. Subsection (3) applies an affirmative resolution procedure to regulations under this clause.

5. Subsection (4) prevents this power being used after the implementation of stamp duty land tax.

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**BACKGROUND**

6. In his Budget speech the Chancellor announced that consultation on lease duty should continue and he would legislate the proposed structure for the charge on the rental element of new leases only if a suitable alternative is not identified.

7. This power enables a revised structure for lease duty to be introduced before implementation of stamp duty land tax.

8. It is identical in structure to that set out in clause 109, and uses similar procedures. But it enables changes to be made to the rate and structure of certain aspects of stamp duty land tax.

9. This power is time limited, and designed solely to enable any changes arising from the continuing consultation on lease duty to be implemented prior to stamp duty land tax coming into force.

**EXPLANATORY NOTE**

**CLAUSE 113: FUNCTIONS CONFERRED ON “THE INLAND REVENUE”**

**SUMMARY**

1. This clause confers functions on the Inland Revenue.
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**DETAILS OF THE CLAUSE**

2. Subsection (1) provides that references in this Part to the Inland Revenue are to any officer to the Board except as otherwise provided.
  3. Subsection (2) provides that regulations may only be made by the Board of Inland Revenue.
  4. Subsection (3) specifies what functions of the Inland Revenue in Schedule 10 may be performed by the Board or an officer of the Board.
  5. Subsection (4) provides that this section does not override any other specific provision of this Part conferring functions on the Board, an officer of the Board or a collector etc.
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**BACKGROUND**

6. This section is based on similar provisions in the Taxes Acts.

**EXPLANATORY NOTE**

**CLAUSE 114: ORDERS AND REGULATIONS MADE BY THE  
TREASURY OR THE INLAND REVENUE**

**SUMMARY**

1. This clause provides general provisions for regulatory powers within this Part, and exceptions.

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**DETAILS OF THE CLAUSE**

2. Subsection (1) provides that any power to make regulations in this Part is (except as otherwise provided) a power to make a statutory instrument.

3. Subsection (2) provides exceptions from the general rule in subsection (1) for regulations made under paragraph 8 of Schedule 5 (power to determine discount rate for the purposes of computing tax chargeable on leases) or under section 178(5) of the Finance Act 1989 (variation of interest rates).

4. Subsection (3) provides that except as otherwise provided the statutory instruments shall be made subject to annulment by the House of Commons (the “negative procedure”).

5. Subsection (4) disapplies subsection (3) for statutory instruments made under:

- paragraph 1(3) of Schedule 9 of this Bill (additions to list of relevant public sector bodies),
- clause 61 (power to add to list of public authorities), and
- paragraph 17(2) of Schedule 19 (power to appoint implementation date of this Part of the Bill).

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**BACKGROUND**

6. This section reflects the usual procedures for regulations in respect of tax law.

**EXPLANATORY NOTE**

**CLAUSE 115: GENERAL COMMISSIONERS AND APPEALS AND  
OTHER PROCEEDINGS**

**SUMMARY**

1. This clause provides for Schedule 17 which provides vires powers for the Lord Chancellor to make regulations to cover administrative provisions for appeal proceedings.

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**DETAILS OF THE SCHEDULE**

2. This Schedule provides for regulations to be made by the Lord Chancellor.

3. Paragraph 1 applies Part 1 of TMA to stamp duty land tax. This gives the General and Special Commissioners of Tax jurisdiction in appeals involving stamp duty land tax.

4. Paragraph 2 allows for regulations providing which body of Commissioners is to determine which matter, or which relevant Lands Tribunal.

5. Paragraph 3 provides for regulations to determine whether the General or Special Commissioners will deal with a matter or if both of them have jurisdiction.

6. Paragraph 4 provides for regulations to determine which body of General Commissioners shall have jurisdiction and Paragraph 5 allows regulations to determine that in certain circumstances jurisdiction can be with the Special Commissioners and not the General Commissioners and that a different division of General Commissioners can deal with a matter to the one which would otherwise apply.

7. Paragraph 6 provides for regulations to deal with the quorum of the General or Special Commissioners.

8. Paragraph 7 provides that regulations can cover the practice and procedure of the Commissioners.
9. Paragraph 8 permits regulations to deal with the consequences of the determination.
10. Paragraph 9 permits regulations to deal with the award of costs at appeal hearings.
11. Paragraph 10 provides that regulations shall determine the finality of any matter determined by the Commissioners.
12. Paragraph 11 provides that regulations made under this Schedule may apply any other enactment with or without modification, may make different provision for cases and different circumstances and may include such supplementary, incidental, consequential and transitional provision as is necessary.
13. Paragraph 12 permits regulations to amend any provision of this Schedule.
14. Paragraph 13 confirms that the regulations can only be made with the consent of Scottish Ministers.
15. Paragraph 14 provides that regulations under this Schedule are to be made by statutory instrument which is subject to annulment by Parliament.
16. Paragraph 15 deals with interpretation of this Schedule.

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## **BACKGROUND**

17. This Schedule allows regulations to be made by the Lord Chancellor to deal with administrative matters relevant to stamp duty land tax appeal proceedings.
18. The provision for proceedings will be modelled on provision for income tax and corporation tax in TMA and will allow the application to stamp duty land tax of current relevant statutory instruments including the Special Commissioners (Jurisdiction and Procedure) Regulations SI 1811/1994 and the General Commissioners (Jurisdiction and Procedure) Regulations SI 1812/1994.