

## SCHEDULES

### SCHEDULE 4

Section 10(4).

#### PENALTIES: PROCEDURE AND APPEALS

##### *Determination of penalties by officer of Board*

- 1
- (1) Subject to sub-paragraph (2) below and except where proceedings for a penalty have been instituted under paragraph 5 below, an officer of the Board authorised by the Board for the purposes of this paragraph may make a determination—
    - (a) imposing a penalty under section 9 above; and
    - (b) setting it at such amount as, in his opinion, is correct or appropriate.
  - (2) Sub-paragraph (1) above does not apply where the penalty is imposed under subsection (3)(b) or (c) of section 9 above and is such a penalty as is mentioned in subsection (4)(a) of that section.
  - (3) Notice of a determination of a penalty under this paragraph shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
  - (4) After the notice of a determination under this paragraph has been served the determination shall not be altered except in accordance with this paragraph or on appeal.
  - (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this paragraph that the amount of a penalty determined under this paragraph is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.

##### *Provisions supplementary to paragraph 1*

- 2
- (1) Where a person who has incurred a penalty under section 9 above has died—
    - (a) a determination under paragraph 1 above which could have been made in relation to him may be made in relation to his personal representatives; and
    - (b) any penalty imposed on personal representatives by virtue of this sub-paragraph shall be a debt due from and payable out of his estate.
  - (2) A penalty determined under paragraph 1 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
  - (3) Part VI of the Taxes Management Act 1970 shall apply in relation to a penalty determined under paragraph 1 above as if it were tax charged in an assessment and due and payable.

---

*Status: This is the original version (as it was originally enacted).*

---

*Appeals against penalty determinations*

- 3 (1) An appeal may be brought against the determination of a penalty under paragraph 1 above.
- (2) In the case of a penalty under section 9(1), (3)(a) or (5)(a) above—
- (a) in Great Britain, the provisions of sections 12 to 15 of the Social Security Act 1998 shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against a decision under section 8 or 10 of that Act; or
  - (b) in Northern Ireland, the provisions of Articles 13 to 15 of the Social Security (Northern Ireland) Order 1998 and section 15 of the Social Security Act 1998 shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against a decision under Article 9 or 11 of that Order.
- (3) Except in the case of such a penalty, the provisions of the Taxes Management Act 1970 relating to appeals, except section 50(6) to (8), shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (4) On an appeal by virtue of sub-paragraph (3) above against the determination of a penalty under paragraph 1 above, the General or Special Commissioners may—
- (a) if it appears to them that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears to them to be appropriate, confirm the determination;
  - (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate; or
  - (d) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (5) An appeal from a decision of the Commissioners against the amount of a penalty which has been determined under paragraph 1 above or this paragraph shall lie, at the instance of the person liable to the penalty—
- (a) to the High Court; or
  - (b) in Scotland, to the Court of Session as the Court of Exchequer in Scotland;
- and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this paragraph.

*Penalty proceedings before Commissioners*

- 4 (1) An officer of the Board authorised by the Board for the purposes of this paragraph may commence proceedings for any penalty to which sub-paragraph (1) of paragraph 1 above does not apply by virtue of sub-paragraph (2) of that paragraph.
- (2) Proceedings under this paragraph shall be by way of information in writing, made to the General or Special Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) Part VI of the Taxes Management Act 1970 shall apply in relation to a penalty determined in proceedings under this paragraph as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this paragraph shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
  - (a) by any party on a question of law; and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
  - (a) if it appears that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears to be appropriate, confirm the determination;
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate; or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

*Penalty proceedings before court*

- 5 (1) Where in the opinion of the Board the liability of any person for a penalty under section 9 above arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.
- (2) Subject to sub-paragraph (3) below, proceedings under this paragraph shall be instituted—
  - (a) in England and Wales, in the name of the Attorney General;
  - (b) in Scotland, in the name of the Advocate General for Scotland; and
  - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Sub-paragraph (2) above shall not prevent proceedings under this paragraph being instituted (in England and Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act.
- (4) Any proceedings under this paragraph instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.

---

*Status: This is the original version (as it was originally enacted).*

---

*Mitigation of penalties*

- 6       The Board may in their discretion mitigate any penalty under section 9 above, or stay or compound any proceedings for a penalty, and may also, after judgment, further mitigate or entirely remit the penalty.

*Time limits for penalties*

- 7       (1) A penalty under section 9(1) above relating to a claim for tax credit may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the court—
- (a) at any time within six years after the date on which the penalty was incurred; or
  - (b) at any later time within three years after the final determination of entitlement to the tax credit claimed.
- (2) Any other penalty under section 9 above may be so determined, or proceedings for the penalty may be commenced before an appeal tribunal or the court, at any time within six years after the date on which the penalty was incurred or began to be incurred.

*Interest on penalties*

- 8       (1) After paragraph (o) of section 178(2) of the Finance Act 1989 (setting rates of interest) there shall be inserted—
- “(p) paragraph 8 of Schedule 4 to the Tax Credits Act 1999.”
- (2) A penalty under section 9 above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which it becomes due and payable until payment.