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## SCHEDULES

### SCHEDULE 23

#### DATA-GATHERING POWERS

##### **Modifications etc. (not altering text)**

- C1** Sch. 23 amendment to earlier affecting provision SI 2009/470 reg. 33(1) (6.4.2012) by [The Education \(Student Loans\) \(Repayment\) \(Amendment\) Regulations 2012 \(S.I. 2012/836\)](#), regs. 1, 4
- C1** Sch. 23 applied by S.I. 2009/470 reg. 33(1) (as substituted (6.4.2013) by [The Education \(Student Loans\) \(Repayment\) \(Amendment\) Regulations 2013 \(S.I. 2013/607\)](#), regs. 1(1), 9))

#### **PART 4**

#### PENALTIES

##### *Penalties for failure to comply*

- 30 (1) If the data-holder fails to comply with a data-holder notice, the data-holder is liable to a penalty of £300.
- (2) A reference in this Schedule to failing to comply with a data-holder notice includes—
- (a) concealing, destroying or otherwise disposing of a material document, or
  - (b) arranging for any such concealment, destruction or disposal.
- (3) A document is a material document if, at the time when the data-holder acts—
- (a) the data-holder has received a data-holder notice requiring the data-holder to provide the document or data contained in the document, or
  - (b) the data-holder has not received such a notice but has been informed by an officer of Revenue and Customs that the data-holder will do so or is likely to do so.
- (4) A document is not a material document by virtue of sub-paragraph (3)(a) if the data-holder notice has already been complied with, unless—
- (a) the data-holder has been notified in writing by an officer of Revenue and Customs that the data-holder must continue to preserve the document, and
  - (b) the notification has not been withdrawn.
- (5) A document is not a material document by virtue of sub-paragraph (3)(b) if more than 6 months have elapsed since the data-holder was (or was last) informed.

##### *Daily default penalties for failure to comply*

- 31 If—
- (a) a penalty under paragraph 30 is assessed, and

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- (b) the failure in question continues after the data-holder has been notified of the assessment,  
the data-holder is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

*Penalties for inaccurate information or documents*

- 32 (1) This paragraph applies if—
- (a) in complying with a data-holder notice, the data-holder provides inaccurate data, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is—
- (a) due to a failure by the data-holder to take reasonable care, or
  - (b) deliberate on the data-holder's part.
- (3) Condition B is that the data-holder knows of the inaccuracy at the time the data are provided but does not inform HMRC at that time.
- (4) Condition C is that the data-holder—
- (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) If this paragraph applies, the data-holder is liable to a penalty not exceeding £3,000.

*Failure to comply with time limit*

- 33 A failure to do anything required to be done within a limited period of time does not give rise to liability under paragraph 30 or 31 if the thing was done within such further time (if any) as an officer of Revenue and Customs may have allowed.

*Reasonable excuse*

- 34 (1) Liability to a penalty under paragraph 30 or 31 does not arise if the data-holder satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the data-holder's control,
  - (b) if the data-holder relies on another person to do anything, that is not a reasonable excuse unless the data-holder took reasonable care to avoid the failure,
  - (c) if the data-holder had a reasonable excuse for the failure but the excuse has ceased, the data-holder is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Assessment of penalties*

- 35 (1) If the data-holder becomes liable to a penalty under paragraph 30, 31 or 32, HMRC may assess the penalty.
- (2) If they do so, they must notify the data-holder.

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- (3) An assessment of a penalty under paragraph 30 or 31 must be made within the period of 12 months beginning with the latest of the following—
- the date on which the data-holder became liable to the penalty,
  - the end of the period in which notice of an appeal against the data-holder notice (or a requirement in it) could have been given, and
  - if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 32 must be made—
- within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - within the period of 6 years beginning with the date on which the data-holder became liable to the penalty.

*Right to appeal against penalty*

- 36 The data-holder may appeal against a decision by an officer of Revenue and Customs—
- that a penalty is payable under paragraph 30, 31 or 32, or
  - as to the amount of such a penalty.

*Procedure on appeal against penalty*

- 37 (1) Notice of an appeal under paragraph 36 must be given—
- in writing,
  - before the end of the period of 30 days beginning with the date on which notification under paragraph 35 was given, and
  - to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under paragraph 36(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 36(b) that is notified to the tribunal, the tribunal may—
- confirm the decision, or
  - substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this paragraph and paragraph 40, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under paragraph 36 as they have effect in relation to an appeal against an assessment to income tax.

*Increased daily default penalty*

- 38 (1) This paragraph applies if—
- a penalty under paragraph 31 is assessed under paragraph 35,
  - the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and

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- (c) the data-holder has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.
- (2) If this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be imposed on the data-holder.
- (3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day (see paragraph 39) on which the failure continues—
  - (a) the data-holder is not liable to a penalty under paragraph 31 in respect of the failure, and
  - (b) the data-holder is liable instead to a penalty under this paragraph of an amount determined by the tribunal.
- (4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.
- (5) But subject to that, in determining the amount the tribunal must have regard to—
  - (a) the likely cost to the data-holder of complying with the data-holder notice,
  - (b) any benefits to the data-holder of not complying with it, and
  - (c) any benefits to anyone else resulting from the data-holder's non-compliance.
- 39 (1) If a data-holder becomes liable to a penalty under paragraph 38, HMRC must notify the data-holder.
- (2) The notification must specify the day from which the increased penalty is to apply.
- (3) That day and any subsequent day is an “applicable day” for the purposes of paragraph 38(3).

#### *Enforcement of penalties*

- 40 (1) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the date mentioned in sub-paragraph (2).
- (2) That date is—
  - (a) the date on which notification under paragraph 35 or 39 is given in respect of the penalty, or
  - (b) if (in the case of a penalty under paragraph 30, 31 or 32) a notice of appeal under paragraph 36 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

#### *Power to change amount of penalties*

- 41 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 30(1), 31, 32(5) and 38(4) such other sums as appear to them to be justified by the change.
- (2) “Relevant date”, in relation to a specified sum, means—
  - (a) the day on which this Act is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

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- (3) Regulations under this paragraph do not apply to—
- (a) a failure which began before the date on which they come into force, or
  - (b) an inaccuracy in any data or document provided to HMRC before that date.

*Double jeopardy*

- 42 The data-holder is not liable to a penalty under this Schedule in respect of anything in respect of which the data-holder has been convicted of an offence.

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