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## SCHEDULES

### SCHEDULE 1

#### SUPPLEMENTARY PROVISIONS RELATING TO CONTRIBUTIONS OF CLASSES 1, 1A, 2 AND 3

##### *Special penalties in the case of certain returns*

- 7 (1) This paragraph applies where regulations under paragraph 6 above make provision requiring any return which is to be made in accordance with a specified provision of regulations under that paragraph (the “contributions return”) to be made—
- (a) at the same time as any specified return required to be made in accordance with a provision of regulations made by the Inland Revenue under section 203(2) (PAYE) or 566(1) (sub-contractors) of the <sup>M1</sup>Income and Corporation Taxes Act 1988 to which section 98A of the <sup>M2</sup>Taxes Management Act 1970 applies (the “tax return”); or
  - (b) if the circumstances are such that the return mentioned in paragraph (a) above does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made;
- and, in a case falling within paragraph (b) above, any reference in the following provisions of this paragraph to the tax return shall be construed as a reference to the return there mentioned.
- (2) Where this paragraph applies, regulations under paragraph 6 above may provide that section 98A of the <sup>M3</sup>Taxes Management Act 1970 (penalties for late, fraudulent or negligent returns) shall apply in relation to any specified provision of regulations in accordance with which the contributions return is required to be made; and where they so provide then, subject to the following provisions of this paragraph—
- (a) that section shall apply in relation to the contributions return as it applies in relation to the tax return; and
  - (b) sections 100 to 100D and 102 to 104 of that Act shall apply in relation to a penalty under section 98A of that Act to which a person is liable by virtue of this sub-paragraph as they apply in relation to any other penalty under that section.
- (3) Where a person is liable to a penalty under paragraph (a) of subsection (2) of section 98A of that Act (first 12 months’ default) in consequence of a failure in respect of a tax return, he shall not also be liable to a penalty under that paragraph in respect of any failure in respect of the associated contributions return.
- (4) In any case where—
- (a) a person is liable to a penalty under subsection (2)(b) or (4) of that section (tax-related penalties) in respect of both a tax return and its associated contributions return, and

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- (b) an officer of the Inland Revenue authorised for the purposes of section 100 of that Act has determined that a penalty is to be imposed under that provision in respect of both returns,  
the penalty so imposed shall be a single penalty of an amount not exceeding the limit determined under sub-paragraph (5) below.
- (5) The limit mentioned in sub-paragraph (4) above is an amount equal to the sum of—
- (a) the maximum penalty that would have been applicable under subsection (2) (b) or (4) of section 98A of that Act (as the case may be) for a penalty in relation to the tax return only; and
- (b) the maximum penalty that would have been so applicable in relation to the associated contributions return only.
- (6) So much of any single penalty imposed by virtue of sub-paragraph (4) above as is recovered by the Inland Revenue shall, after the deduction of any administrative costs of the Inland Revenue attributable to its recovery, be apportioned between the Inland Revenue and the Department in the ratio T:C, where—
- T is the maximum penalty that could have been imposed under the provision in question in relation to the tax return only; and
- C is the maximum penalty that could have been so imposed in relation to the associated contributions return only.
- (7) The Inland Revenue shall, at such times and in such manner as the Department of Finance and Personnel may direct, account to the Department for, and pay to it—
- (a) the amounts apportioned to the Department under sub-paragraph (6) above in respect of such penalties as are there mentioned; and
- (b) so much of any penalty otherwise imposed by virtue of this paragraph and recovered by the Inland Revenue as remains after the deduction by them of any administrative costs attributable to its recovery.
- (8) Sub-paragraphs (6) and (7) above shall have effect notwithstanding any provision which treats a penalty under section 98A of that Act as if it were tax charged in an assessment and due and payable.
- (9) In the application of section 98A of that Act by virtue of this paragraph, any reference to a year of assessment shall be construed, in relation to a contributions return, as a reference to the tax year corresponding to that year of assessment.
- (10) In the application of section 100D of that Act (court proceedings for penalties in cases of fraud) by virtue of this paragraph—
- (a) subsection (2) shall have effect with the omission of the words “England, Wales or” and paragraphs (a) and (b); and
- (b) subsection (3) shall have effect with the omission of the words from “instituted in England and Wales” to “and any such proceedings” and the substitution for “that Part of that Act” of “Part II of the Crown Proceedings Act 1947”.
- (11) In the application of section 103 of that Act (time limit for recovery) by virtue of this paragraph—
- (a) any reference in subsection (1) to tax shall be taken to include a reference to Class 1 and Class 1A contributions;
- (b) any penalty by virtue of sub-paragraph (4) above shall be regarded as a penalty in respect of the tax return in question; and

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- (c) where, by virtue of subsection (2) (death), subsection (1)(b) does not apply in relation to a penalty under section 98A(2)(b) or (4) of that Act in respect of a tax return, it shall also not apply in relation to a penalty so imposed in respect of the associated contributions return.
- (12) A penalty under section 98A of that Act as it applies by virtue of this paragraph may be imposed notwithstanding that a question arising in relation to contributions has not been determined under section 15 of the Administration Act by the Department except that where—
- (a) any such question arises which affects a person’s liability for, or the amount of, the penalty, and
  - (b) either—
    - (i) that person requires the question to be determined under section 15, or
    - (ii) a question of law arising in connection with the determination of the question is, or is to be, referred to the Court of Appeal under section 16 of the Administration Act,
- the penalty shall not be imposed until the question has been determined under section 15 of the Administration Act by the Department or the reference has been finally disposed of under section 16 of that Act, as the case may be; but, subject to that, this paragraph is without prejudice to sections 15 to 17 of the Administration Act.
- (13) For the purposes of this paragraph—
- (a) “contributions return” and “tax return” shall be construed in accordance with sub-paragraph (1) above; and
  - (b) a contributions return and a tax return are “associated” if the contributions return is required to be made—
    - (i) at the same time as the tax return, or
    - (ii) where sub-paragraph (1)(b) above applies, at a time defined by reference to the time for making the tax return.

#### Marginal Citations

- M1 1988 c. 1.
- M2 1970 c. 9.
- M3 1970 c. 9.

VALID FROM 10/03/1999

[<sup>F1</sup>7A (1) This paragraph applies where paragraph 7 above applies; and in this paragraph “contributions return” has the same meaning as in that paragraph.

(2) Without prejudice to paragraph 7(2) above or to the powers of the Inland Revenue to penalise omissions or errors in returns, regulations may provide for the Department to impose penalties in respect of a person who, in making a contributions return, fraudulently or negligently—

- (a) fails to provide any information or computation that he is required to provide; or

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(b) provides any such information or computation that is incorrect.

(3) Regulations under sub-paragraph (2) above shall—

- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
- (b) provide for the penalty to be imposed by the Department within 6 years after the date on which the penalty is incurred;
- (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
- (d) prescribe the means by which the penalty is to be enforced; and
- (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.]

#### **Textual Amendments**

**F1** Sch. 1 para. 7A inserted (10.3.1999 for specified purposes and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 53(2); S.R. 1999/102, art. 2(b), Sch. Pt. II

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