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## SCHEDULES

### SCHEDULE 6

Section 30.

#### CLIMATE CHANGE LEVY

##### PART I

##### THE LEVY

###### *Climate change levy*

- 1 (1) A tax to be known as climate change levy (“the levy”) shall be charged in accordance with this Schedule.
- (2) The levy is under the care and management of the Commissioners of Customs and Excise.

###### *Levy charged on taxable supplies*

- 2 (1) The levy is charged on taxable supplies.
- (2) Any supply of a taxable commodity is a taxable supply, subject to the provisions of Part II of this Schedule.

###### *Meaning of “taxable commodity”*

- 3 (1) The following are taxable commodities for the purposes of this Schedule, subject to sub-paragraph (2) and to any regulations under sub-paragraph (3)—
- (a) electricity;
  - (b) any gas in a gaseous state that is of a kind supplied by a gas utility;
  - (c) any petroleum gas, or other gaseous hydrocarbon, in a liquid state;
  - (d) coal and lignite;
  - (e) coke, and semi-coke, of coal or lignite;
  - (f) petroleum coke.
- (2) The following are not taxable commodities—
- (a) hydrocarbon oil or road fuel gas within the meaning of the <sup>M1</sup>Hydrocarbon Oil Duties Act 1979;
  - (b) waste within the meaning of Part II of the <sup>M2</sup>Environmental Protection Act 1990 or the meaning given by Article 2(2) of the <sup>M3</sup>Waste and Contaminated Land (Northern Ireland) Order 1997.
- (3) The Treasury may by regulations provide that a commodity of a description specified in the regulations is, or is not, a taxable commodity for the purposes of this Schedule.

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#### Marginal Citations

- M1** 1979 c. 5.  
**M2** 1990 c. 5.  
**M3** S.I. 1997/2778 (N.I. 19).

## PART II

### TAXABLE SUPPLIES

#### *Introduction*

- 4 (1) A supply of a taxable commodity (or part of such a supply) is a taxable supply for the purposes of the levy if levy is chargeable on the supply under—  
paragraph 5 (supplies of electricity),  
paragraph 6 (supplies of gas), or  
paragraph 7 (other supplies in course or furtherance of business),  
and the supply (or part) is not excluded under paragraphs 8 to 10 or exempt under paragraphs 11 to 22.
- (2) In this Schedule—  
(a) references to a supply of a taxable commodity include a supply that is deemed to be made under paragraph 23, and  
(b) references to a taxable supply include a supply that is deemed to be made under paragraph 24,  
but paragraphs 23 and 24 have effect subject to any exceptions provided for under paragraph 21.

#### *Supplies of electricity*

- 5 (1) Levy is chargeable on a supply of electricity if—  
(a) the supply is made by an electricity utility, and  
(b) the person to whom the supply is made—  
(i) is not an electricity utility, or  
(ii) is the utility itself.
- (2) Levy is chargeable on a supply made from a combined heat and power station of electricity produced in the station if—  
(a) the station is a partly exempt combined heat and power station,  
(b) the supply is not one that is deemed to be made under paragraph 23(3) (self-supply by producer), and  
(c) the person to whom the supply is made is not an electricity utility.
- (3) Levy is chargeable on a supply of electricity that is deemed to be made under paragraph 23(3).
- (4) Except as provided by sub-paragraphs (1) to (3), levy is not chargeable on a supply of electricity.

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### *Supplies of gas*

- 6 (1) Levy is chargeable on a supply of any gas if—
- (a) the supply is made by a gas utility, and
  - (b) the person to whom the supply is made—
    - (i) is not a gas utility, or
    - (ii) is the utility itself.
- (2) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 23(3) (self-supply by producer) if the gas—
- (a) is held in a gaseous state immediately prior to being released for burning, and
  - (b) is of a kind supplied by a gas utility.
- (3) Except as provided by sub-paragraphs (1) and (2), levy is not chargeable on a supply of any gas that is supplied in a gaseous state.

### *Other supplies made in course or furtherance of business*

- 7 (1) This paragraph applies to a supply of a taxable commodity other than—
- (a) electricity, or
  - (b) gas in a gaseous state.
- (2) Levy is chargeable on any such supply if the supply is made in the course or furtherance of a business.

### *Excluded supplies: supply for domestic or charity use*

- 8 (1) A supply is excluded from the levy if it is—
- (a) for domestic use (see paragraph 9), or
  - (b) for charity use.
- (2) For the purposes of this paragraph, a supply is for charity use if the commodity supplied is for use by a charity otherwise than in the course or furtherance of a business.
- (3) If a supply is partly for domestic or charity use and partly not, the part of the supply that is for domestic or charity use is excluded from the levy.
- (4) Where a supply of a commodity is partly for domestic or charity use and partly not—
- (a) if at least 60 per cent. of the commodity is supplied for domestic or charity use, the whole supply is treated as a supply for domestic or charity use, and
  - (b) in any other case, an apportionment shall be made to determine the extent to which the supply is for domestic or charity use.

### *Excluded supplies: meaning of "for domestic use"*

- 9 (1) For the purposes of paragraph 8 the following supplies are always for domestic use—
- (a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;
  - (b) a supply to a person at any premises of—
    - (i) any gas in a gaseous state that is provided through pipes and is of a kind supplied by a gas utility, or
    - (ii) petroleum gas in a gaseous state provided through pipes,

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- where the gas or petroleum gas (together with any other gas or petroleum gas provided through pipes to him at the premises by the same supplier) was not provided at a rate exceeding 4397 kilowatt hours a month;
- (c) a supply of petroleum gas in a liquid state where the petroleum gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the petroleum gas is not intended for sale by the recipient;
  - (d) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such petroleum gas;
  - (e) a metered supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month;
  - (f) an unmetered supply of electricity to a person where the electricity (together with any other unmetered electricity provided to him by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.
- (2) For the purposes of paragraph 8, supplies not within sub-paragraph (1) are for domestic use if and only if the commodity supplied is for use in—
- (a) a building, or part of a building, which consists of a dwelling or number of dwellings,
  - (b) a building, or part of a building, used for a relevant residential purpose,
  - (c) self-catering holiday accommodation (including any accommodation advertised or held out as such),
  - (d) a caravan,
  - (e) a houseboat (that is to say, a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion), or
  - (f) an appliance that—
    - (i) is not part of a combined heat and power station,
    - (ii) is located otherwise than in premises of a description mentioned in any of paragraphs (a) to (e), and
    - (iii) is used to heat air or water that, when heated, is supplied to premises of, or each of, such a description.
- (3) For the purposes of this paragraph use for a relevant residential purpose means use as—
- (a) a home or other institution providing residential accommodation for children,
  - (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,
  - (c) a hospice,
  - (d) residential accommodation for students or school pupils,
  - (e) residential accommodation for members of any of the armed forces,
  - (f) a monastery, nunnery or similar establishment, or
  - (g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

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except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

<sup>F1</sup>(4) .....

[<sup>F2</sup>(5) The power to make provision under section 29A(3) of the Value Added Tax Act 1994 varying Schedule 7A to that Act (charge at reduced rate) includes power to make provision for any appropriate corresponding variation of this paragraph.]

#### Textual Amendments

**F1** Sch. 6 para. 9(4) repealed (1.11.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. 3(1)

**F2** Sch. 6 para. 9(5) inserted (1.11.2001) by 2001 c. 9, s. 99, Sch. 31 Pt. 2 para. 7

#### *Excluded supplies: supply before 1st April 2001*

10 Any supply made before 1st April 2001 is excluded from the levy.

#### *Exemption: supply not for burning in the UK*

11 (1) A supply of a taxable commodity to which this sub-paragraph applies is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier—

- (a) that he intends to use the commodity in making supplies of it to any other person, or
- (b) that he intends to cause the commodity to be exported from the United Kingdom and has no intention to cause it to be thereafter brought back into the United Kingdom.

(2) Sub-paragraph (1) applies to supplies of a taxable commodity other than—

- (a) electricity, or
- (b) any gas in a gaseous state.

(3) A supply of electricity, or of gas in a gaseous state, is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier that—

- (a) he intends to cause the commodity to be exported from the United Kingdom, and
- (b) has no intention to cause it to be thereafter brought back into the United Kingdom.

(4) Regulations under paragraph 22 may, in particular, include provision as to the application of sub-paragraph (3) in cases where a person who is both an exporter and an importer of a commodity intends to be a net exporter of the commodity.

#### *Exemption: Northern Ireland gas supplies*

[<sup>F3</sup>11A A supply of gas is exempt from the levy if—

- (a) the supply is made by a gas utility, and
- (b) the person to whom the supply is made intends to cause the gas to be burned in Northern Ireland.]

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### Textual Amendments

- F3** Sch. 6 para. 11A and cross-heading inserted (11.5.2001 with effect as mentioned in S. 105(7)) by 2001 c. 9, s. 105(2)(7)

#### *Exemption: supply used in transport*

- 12 (1) A supply of a taxable commodity is exempt from levy if the commodity is to be burned (or, in the case of electricity, consumed)—
- (a) in order to propel a train,
  - (b) in order to propel a non-railway vehicle while it is being used for, or for purposes connected with, transporting passengers,
  - (c) in a railway vehicle, or a non-railway vehicle, while it is being used for, or for purposes connected with, transporting passengers,
  - (d) in a railway vehicle while it is being used for, or for purposes connected with, transporting goods, or
  - (e) in a ship while it is engaged on a journey any part of which is beyond the seaward limit of the territorial sea.

Paragraphs (a) to (c) are subject to the exception in sub-paragraph (3).

- (2) In this paragraph—

“railway vehicle” and “train” have the meaning given by section 83 of the <sup>M4</sup>Railways Act 1993;

“non-railway vehicle” means—

- (a) any vehicle other than a railway vehicle, or
- (b) any ship,

that is designed or adapted to carry not less than 12 passengers.

- (3) Sub-paragraph (1)(a) to (c) does not apply in relation to the transporting of passengers to, from or within—

- (a) a place of entertainment, recreation or amusement, or
- (b) a place of cultural, scientific, historical or similar interest,

that is a place to which rights of admission, or where rights to use facilities at it, are supplied by the person to whom the commodity is supplied or by a person connected with him within the meaning of section 839 of the Taxes Act 1988.

### Marginal Citations

- M4** 1993 c. 43.

#### *Exemption: supplies to producers of commodities other than electricity*

- 13 A supply of a taxable commodity to a person is exempt from the levy if—
- (a) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3), and
  - (b) the commodity is to be used by that person—
    - (i) in producing taxable commodities other than electricity,

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- (ii) in producing hydrocarbon oil or road fuel gas,
- (iii) in producing, for chargeable use within the meaning of section 6A of the <sup>M5</sup>Hydrocarbon Oil Duties Act 1979 (fuel substitutes), liquids that are not hydrocarbon oil, or
- (iv) in producing uranium for use in an electricity generating station.

For this purpose “hydrocarbon oil” and “road fuel gas” have the same meaning as in the <sup>M6</sup>Hydrocarbon Oil Duties Act 1979 and “liquid” has the same meaning as in section 6A of that Act.

#### Marginal Citations

- M5 1979 c. 5.
- M6 1979 c. 5.

*Exemption: supplies (other than self-supplies) to electricity producers*

- 14 (1) A supply of a taxable commodity to a person is exempt from the levy if—(a) the commodity is to be used by that person in producing electricity in a generating station that is neither—
- (i) a fully exempt combined heat and power station, nor
  - (ii) a partly exempt combined heat and power station,
- and
- (b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).
- (2) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—
- (a) is an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury, <sup>F4</sup> . . .
  - (b) uses the commodity supplied in producing electricity [<sup>F5</sup>, and
  - (c) uses the electricity produced otherwise than in exemption-retaining ways.]
- (3) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—
- (a) is an auto-generator,
  - (b) uses the commodity supplied in producing electricity, and
  - [<sup>F6</sup>(c) uses the electricity produced otherwise than in exemption-retaining ways.]
- [<sup>F7</sup>(3A) For the purposes of this paragraph, electricity is used in an “exemption-retaining” way if it is used—
- (a) in making supplies that are excluded under paragraphs 8 to 10 or exempt under any of paragraphs 11, 12 and 18, or
  - (b) in any of the ways mentioned in sub-paragraphs (i) to (iv) of paragraph 13(b).]
- (4) In this paragraph “exempt unlicensed electricity supplier” means a person—
- (a) to whom an exemption from section 4(1)(c) of the <sup>M7</sup>Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or

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- (b) to whom an exemption from Article 8(1)(c) of the <sup>M8</sup>Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order,

except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

- (5) Sub-paragraph (4) applies subject to—
- (a) any direction under paragraph 151(1), and
  - (b) any regulations under paragraph 151(2).

Exemption: supplies (other than self-supplies) to combined heat and power stations

#### Textual Amendments

- F4** Word in Sch. 6 para. 14(2)(a) repealed (11.5.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. 3(3)
- F5** Sch. 6 para 14(2)(c) and preceding word inserted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(3)(7)
- F6** Sch. 6 para. 14(3)(c) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(4)(7)
- F7** Sch. 6 para. 14(3A) inserted (11.5.2001) with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(5)(7)

#### Marginal Citations

- M7** 1989 c. 29.
- M8** S.I. 1992/231 (N.I. 1)

- 15 (1) A supply of a taxable commodity to a person is exempt from the levy if—(a)<sup>F8</sup>that person intends to cause the commodity to be used]the commodity is to be used by that person in—
- (i) a fully exempt combined heat and power station, or
  - (ii) a partly exempt combined heat and power station,
- in producing any outputs of the station, and
- (b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

For this purpose “outputs” has the meaning given by paragraph 148(9).

- (2) Where—
- (a) a supply of a taxable commodity to a person would (apart from this sub-paragraph) be exempted in full by sub-paragraph (1), and
  - (b) at the time the supply is made, the efficiency percentage for the combined heat and power station in which the commodity is to be used <sup>F9</sup>... is less than the threshold efficiency percentage for the station,
- sub-paragraph (1) only exempts the relevant fraction of the supply.
- (3) For the purposes of sub-paragraph (2), the “relevant fraction” of a supply of a taxable commodity that is to be used in a combined heat and power station is the fraction—
- (a) whose numerator is the efficiency percentage for the station at the time the supply is made, and



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- (b) whose denominator is the threshold efficiency percentage for the station at that time.
- (4) For the purposes of this paragraph—
- (a) the “threshold efficiency percentage” for a combined heat and power station is the percentage set as the threshold efficiency percentage for the station by regulations made by the Treasury;
  - (b) the “efficiency percentage” for a combined heat and power station is the percentage stated as the efficiency percentage for the station in a certificate in force in respect of the station under paragraph 148 (certificate given by Secretary of State that station is fully or partly exempt).
- (5) Paragraph 149 confers power to make provision by regulations for determining the efficiency percentage to be stated in a certificate under paragraph 148.

#### Textual Amendments

- F8** Words in Sch. 6 para. 15(1)(a) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(6)
- F9** Words in Sch. 6 para. 15(2)(b) repealed (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, ss. 105(7), 110, Sch. 33 Pt. 3(3) Note

*Exemption: supplies (other than self-supplies) of electricity from partly exempt combined heat and power stations*

- 16 (1) This paragraph applies to a supply that—
- (a) is a supply made from a partly exempt combined heat and power station of electricity produced in the station, and
  - (b) is not a supply that is deemed to be made under paragraph 23(3).
- (2) The supply is exempt from the levy if the quantity of electricity supplied by the supply is not such as causes the exceeding of any specified limit that, by virtue of regulations made by the Treasury, applies in relation to the station for any specified period.
- (3) In this paragraph “specified” means prescribed by, or determined in accordance with, regulations made by the Treasury.

*Exemption: self-supplies by electricity producers*

- 17 (1) This paragraph applies to a supply of electricity that is deemed to be made under paragraph 23(3) by a person (“the producer”) to himself.
- (2) If the producer is an auto-generator, the supply is exempt from the levy unless—
- (a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and
  - (b) the quantity of electricity supplied by the supply is such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.
- (3) If the producer is not an auto-generator, the supply is exempt from the levy if it is a supply made from a fully exempt combined heat and power station of electricity produced in the station.

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- (4) If the producer is not an auto-generator, the supply is exempt from the levy if—
- (a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and
  - (b) the quantity of electricity supplied by the supply is not such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

*Exemption: supply not used as fuel*

- 18 (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used otherwise than as fuel.
- (2) The Treasury may by regulations specify, in relation to any commodity, uses of that commodity that, for the purposes of sub-paragraph (1), are to be taken as being, or as not being, uses of that commodity as fuel.
- (3) The uses of a commodity that may be specified under sub-paragraph (2) as being uses of that commodity as, or otherwise than as, fuel include uses (“mixed uses”) of the commodity that involve it being used partly as fuel and partly not; but the Treasury must have regard to the object of securing that a mixed use is not specified as being a use of the commodity otherwise than as fuel if it involves the use of the commodity otherwise than as fuel in a way that is merely incidental to its use as fuel.

*Exemption: electricity from renewable sources*

- 19 (1) A supply of electricity is exempt from the levy if—
- (a) the supply is not one that is deemed to be made under paragraph 23(3),
  - (b) the supply is made under a contract that contains a renewable source declaration given by the supplier,
  - (c) prescribed conditions are fulfilled, and
  - (d) the supplier, and each other person (if any) who is a generator of any renewable source electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.
- (2) In this paragraph “renewable source declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt renewable supplies made by the supplier in the period will not exceed the difference between—
- (a) the total amount of renewable source electricity that during that period is either acquired or generated by the supplier, and
  - (b) so much of that total amount as is allocated by the supplier otherwise than to exempt renewable supplies made by him in the period.
- In this sub-paragraph “averaging period” has the same meaning as in paragraph 20 and “exempt renewable supplies” means supplies made on the basis that they are exempt under this paragraph.
- (3) For the purposes of this paragraph and paragraph 20, electricity is “renewable source electricity” if—
- (a) it is generated in a prescribed manner, and
  - (b) prescribed conditions are fulfilled.

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A manner of generating electricity may be prescribed by reference to the means by which the electricity is generated or the materials from which it is generated (or both).

- (4) In prescribing a manner of generating electricity under sub-paragraph (3), the Commissioners must have regard to the object of securing that exemption under this paragraph is only available for supplies of electricity that has a renewable source.
- (5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—
- (a) the giving of effect to renewable source declarations;
  - (b) the supply of information;
  - (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
  - (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
  - (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as to or by the Authority or the Director General);
  - (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.
- (6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.
- (7) The conditions that may be prescribed under sub-paragraph (3)(b) include, in particular, conditions in connection with—
- (a) the generation of the electricity;
  - (b) the materials from which the electricity is generated;
  - (c) any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).
- (8) Each of—
- (a) the Gas and Electricity Markets Authority, and
  - (b) the Director General of Electricity Supply for Northern Ireland,
- shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application (whether generally or in relation to any particular case) of any relevant provisions.
- (9) In sub-paragraph (8) “relevant provisions” means provisions of or made under—
- (a) this paragraph or paragraph 20, or
  - (b) paragraph 23(3) so far as relating to electricity, or paragraph 23(4).
- (10) None of—
- (a) section 57(1) of the <sup>M9</sup>Electricity Act 1989,
  - (b) section 42(1) of the <sup>M10</sup>Gas Act 1986, and
  - (c) Article 61(1) of the <sup>M11</sup>Electricity (Northern Ireland) Order 1992,
- (provisions restricting disclosure of information) applies to any disclosure of information made in pursuance of sub-paragraph (8).

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#### Marginal Citations

**M9** 1989 c. 29.

**M10** 1986 c. 44.

**M11** S.I. 1992/231 (N.I. 1).

#### *Exemption under paragraph 19: averaging periods*

- 20 (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 19 (“exempt renewable supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of 3 months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt renewable supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for 2 years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt renewable supplies, the end of the balancing period in which he makes the last exempt renewable supply is also the end of the averaging period in which that balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
    - (i) the quantity of renewable source electricity that the supplier acquired or generated in that period, and
    - (ii) any balancing credit carried forward to that balancing period; and
  - (b) the total of—
    - (i) the quantity of electricity supplied by exempt renewable supplies made by him in that period, and
    - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).

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- (7) Where the end of the balancing period is by virtue of sub-paragraph (2)(c) (averaging period ends after 2 years) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
- is made at the end of the balancing period,
  - is a supply of a quantity of electricity equal to the difference between the two totals, and
  - is treated as a reduced-rate supply to the extent (if any) that the exempt renewable supplies made by the supplier in the averaging period would have been reduced-rate supplies if they had not been made on the basis that they were exempt.
- For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.
- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.

VALID FROM 24/07/2002

*Exemption: electricity produced in combined heat and power stations*

- <sup>F10</sup>20A(1) A supply of electricity is exempt from the levy chargeable under paragraph 5(1) if—
- the supply is not one that is deemed to be made under paragraph 23(3),
  - the supply is made under a contract that contains a CHP declaration given by the supplier,
  - prescribed conditions are fulfilled, and
  - the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.
- (2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.
- (3) In this paragraph “CHP declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP supplies made by the supplier in the period will not exceed the difference between—
- the total amount of CHP electricity that during that period is either acquired or generated by the supplier, and
  - so much of that total amount as is allocated by the supplier otherwise than to exempt CHP supplies made by him in the period.
- In this sub-paragraph “averaging period” has the same meaning as in paragraph 20B; and “exempt CHP supplies” means supplies made on the basis that they are exempt under this paragraph.
- (4) For the purposes of this paragraph and paragraph 20B, electricity is “CHP electricity” if—

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- (a) the electricity was—
    - (i) produced in a fully exempt combined heat and power station, or
    - (ii) produced in a partly exempt combined heat and power station and originally supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded,
  - (b) the electricity is not renewable source electricity (within the meaning of paragraph 19), and
  - (c) prescribed conditions are fulfilled.
- (5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—
- (a) the giving of effect to CHP declarations;
  - (b) the supply of information;
  - (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
  - (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
  - (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);
  - (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.
- (6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.
- (7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).
- (8) Each of—
- (a) the Gas and Electricity Markets Authority, and
  - (b) the Director General of Electricity Supply for Northern Ireland,
- shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).
- (9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).]

#### Textual Amendments

**F10** Sch. 6 para. 20A and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, art. 2

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VALID FROM 24/07/2002

*Exemption under paragraph 20A: averaging periods*

- [<sup>F11</sup>20B] (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 20A (“exempt CHP supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of three months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
    - (i) the quantity of CHP electricity that the supplier acquired or generated in that period, and
    - (ii) any balancing credit carried forward to that balancing period; and
  - (b) the total of—
    - (i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and
    - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
- (7) Where the end of the balancing period is by virtue of sub-paragraph (2)(g) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
- (a) is made at the end of the balancing period, and

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- (b) is a supply of a quantity of electricity equal to the difference between the two totals.

For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.

- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.]

#### Textual Amendments

- F11** Sch. 6 para. 20B and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, art. 2

#### *Regulations to avoid double charges to levy*

- 21 (1) The Commissioners may by regulations make provision for avoiding, counteracting or mitigating double charges to levy.
- (2) For the purposes of this paragraph there is a double charge to levy where—
- (a) a supply of a taxable commodity (“the produced commodity”) is a taxable supply, and
  - (b) a taxable commodity used directly or indirectly in producing the produced commodity has been the subject of a taxable supply.
- (3) Regulations under this paragraph may, in particular, make provision for a supply of a taxable commodity to be wholly or to any extent—
- (a) exempt from the levy, or
  - (b) deemed not a supply of the commodity.
- (4) The provision mentioned in sub-paragraph (3) includes provision for exceptions to any of sub-paragraphs (1) to (3) of paragraph 23 or paragraph 24(3).
- (5) The powers conferred by this paragraph are in addition to the powers to make provision by tax credit regulations in relation to any such case as is mentioned in paragraph 62(1)(g).

#### *Regulations giving effect to exemptions*

- 22 (1) The Commissioners may by regulations make provision for giving effect to the exclusions and exemptions provided for by paragraphs 8 to 21.
- (2) Regulations under this paragraph may, in particular, include provision for—
- (a) determining the extent to which a supply of a taxable commodity is, or is to be treated as being, a taxable supply;
  - (b) authorising a person making supplies of a taxable commodity to another person to treat the supplies to that other person as being taxable supplies only to an extent certified by the Commissioners.



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*Deemed supply: use of commodities by utilities and producers*

- 23 (1) Where an electricity utility—
- (a) has electricity available to it, and
  - (b) as regards a quantity of the electricity, makes no supply of that quantity to another person but causes it to be consumed in the United Kingdom,
- the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the electricity.
- (2) Where a gas utility—
- (a) holds gas in a gaseous state, and
  - (b) as regards a quantity of the gas, makes no supply of that quantity to another person but causes it to be burned in the United Kingdom,
- the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the gas.
- (3) Where—
- (a) a person has produced a taxable commodity,
  - (b) the commodity is either—
    - (i) a taxable commodity other than electricity, or
    - (ii) electricity that has been produced from taxable commodities, and
  - (c) as regards a quantity of the commodity, the person makes no supply of that quantity to another person but causes it to be burned (or, in the case of electricity, consumed) in the United Kingdom,
- the person is for the purposes of this Schedule deemed to make a supply to himself of that quantity of the commodity.
- (4) The Commissioners may by regulations make provision for electricity to be treated for the purposes of sub-paragraph (3)(b)(ii)—
- (a) as produced from taxable commodities unless prescribed conditions are fulfilled, or
  - (b) as produced otherwise than from taxable commodities only where prescribed conditions are fulfilled.
- (5) The conditions that may be prescribed under sub-paragraph (4) include, in particular, conditions in connection with the materials from which the electricity is produced.

*Deemed supply: change of circumstances or intentions*

- 24 (1) This paragraph applies where—
- (a) a supply of a taxable commodity has been made to a person on or after 1st April 2001,
  - (b) the supply was not a taxable supply, and
  - (c) there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply.
- (2) This paragraph does not apply where the supply was not a taxable supply by reason of being exempt from the levy under paragraph 19 (exemption for supply of electricity from renewable sources, but see paragraph 20).

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- (3) The person to whom the supply was made is for the purposes of this Schedule deemed to make a taxable supply of the commodity to himself.
- (4) Where—
- (a) a supply of a taxable commodity was not a taxable supply by virtue of being supplied for use in premises of a description mentioned in any of paragraphs (a) to (f) of paragraph 9(2), and
  - (b) those premises cease to be premises of any of those descriptions,
- sub-paragraph (3) only applies to so much (if any) of the commodity supplied as was not used in the premises before they ceased to be premises of any of those descriptions.
- (5) The Commissioners may by regulations make provision specifying descriptions of occurrences and non-occurrences that are to be taken as being, or as not being, changes of circumstances or intentions for the purposes of sub-paragraph (1)(c).

### PART III

#### TIME OF SUPPLY

##### *Introduction*

- 25 This Part of this Schedule applies to determine when a supply of a taxable commodity is treated as taking place.

##### *Electricity or gas: supply when climate change levy accounting document issued*

- 26 (1) This paragraph applies—
- (a) to supplies of electricity, and
  - (b) to supplies of gas where the gas is supplied in a gaseous state and is of a kind supplied by a gas utility.
- (2) Where this paragraph applies, a supply is treated as taking place each time a climate change levy accounting document in respect of a supply is issued by the person making the supply.
- (3) A supply that is treated as taking place under this paragraph is a supply of the electricity or gas covered by the accounting document.
- (4) Nothing in this paragraph applies to any electricity or gas that is covered by a special utility scheme (see paragraph 29).

##### *Electricity or gas: duty to issue climate change levy accounting document*

- 27 (1) This paragraph applies where on any day—
- (a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person (“the consumer”),
  - (b) the supply by which the electricity or gas is supplied is a taxable supply, and
  - (c) the person liable to account for the levy on that supply is the person making the supply (“the supplier”).

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- (2) A climate change levy accounting document covering the electricity or gas actually supplied on that day must be issued by the supplier no later than—
  - (a) the end of the period of 15 weeks beginning with that day, if on that day the consumer is a small-scale user of the commodity supplied;
  - (b) the end of the period of 6 weeks beginning with that day, if on that day the consumer is not a small-scale user of the commodity supplied.
- (3) A climate change levy accounting document issued under this paragraph that covers the electricity, or the gas of any kind, actually supplied on any day must also cover any electricity or (as the case may be) any gas of that kind that—
  - (a) has been actually supplied by the supplier to the consumer on any earlier day, and
  - (b) has not been covered by a previous climate change levy accounting document.
- (4) For the purposes of this paragraph—
  - (a) an accounting document shall be taken to cover the electricity or gas actually supplied on a day if it covers the electricity or gas actually supplied during a period that includes that day; and
  - (b) an accounting document shall be taken to cover the electricity or gas actually supplied on a day or during a period if it is an accounting document for a quantity of electricity or gas that is a reasonable estimate of the quantity actually supplied.
- (5) A climate change levy accounting document issued under this paragraph must contain a statement of—
  - (a) the quantity of electricity or gas that it covers,
  - (b) the period during which, or during which it is estimated that, that quantity was actually supplied,
  - (c) the supplier's name and address,
  - (d) the customer's name and address, and
  - (e) the reference number used by the supplier for the customer.
- (6) For the purposes of this paragraph a person is, on any day, a small-scale user of a commodity if the rate at which he is taken to be supplied with that commodity on that day does not exceed the prescribed rate.
- (7) The Commissioners may make provision by regulations as to the rate at which a person is, for the purposes of sub-paragraph (6), taken to be supplied with a commodity on any day.
- (8) Regulations under sub-paragraph (7) may, in particular, include provision for—
  - (a) rates to be determined or estimated in accordance with the regulations;
  - (b) rates to be so determined or estimated by reference to the quantity of a commodity actually supplied, or estimated to have been actually supplied, during a period ending with, or at any time before or after, the day in question;
  - (c) cases where a person is supplied with a commodity of any kind by two or more suppliers.
- (9) Nothing in this paragraph applies to any electricity or gas—
  - (a) that is covered by a special utility scheme (see paragraph 29), or

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(b) that is actually supplied before 1st April 2001.

(10) This paragraph applies subject to paragraph 36(5).

*Electricity or gas: actual supply not followed by climate change levy accounting document*

- 28 (1) This paragraph applies where on any day—
- (a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person (“the consumer”),
  - (b) the supply by which the electricity or gas is supplied is a taxable supply,
  - (c) the person liable to account for the levy on that supply is the person making the supply (“the supplier”), and
  - (d) the supplier does not within the period applicable under sub-paragraph (2) of paragraph 27 issue a climate change levy accounting document under that paragraph covering the electricity or gas.
- (2) Where this paragraph applies, a supply is treated as taking place at the end of that period.
- (3) A supply that is treated as taking place under this paragraph is a supply of all the electricity or (as the case may be) gas of the same kind that—
- (a) has been actually supplied by the supplier to the consumer before the end of that period, and
  - (b) has not been covered by a climate change levy accounting document.
- (4) Sub-paragraph (4) of paragraph 27 (interpretation of “covered by an accounting document”) applies for the purposes of this paragraph as for those of that paragraph.
- (5) Nothing in this paragraph applies to any electricity or gas—
- (a) that is covered by a special utility scheme (see paragraph 29),
  - (b) that is actually supplied before 1st April 2001, or
  - (c) that is treated under paragraph 36(3) as supplied on that day.

*Electricity or gas: special utility schemes*

- 29 (1) For the purposes of this Schedule a “special utility scheme” is a scheme for determining when—
- (a) a supply of electricity, or
  - (b) a supply of gas that is in a gaseous state and is of a kind supplied by a gas utility,
- is treated as taking place in cases where the electricity or gas is covered by the scheme.
- (2) If in the opinion of the Commissioners it is reasonable to do so, they may in accordance with the provisions of this paragraph prepare a special utility scheme for a utility or for two or more utilities.
- In this paragraph “utility” includes a person who makes supplies on which levy is chargeable by virtue of paragraph 5(2) (partly exempt combined heat and power stations).
- (3) A special utility scheme shall specify the period for which it is to have effect.

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- (4) No special utility scheme shall be of any effect in relation to any electricity or gas supplied by a utility unless the utility elects in writing to be bound by it for the specified period.
- (5) If a utility makes such an election—
  - (a) the scheme shall have effect for the specified period in relation to such electricity or gas supplied by the utility as is covered by the scheme, and
  - (b) during the specified period the scheme applies to determine when a supply of a taxable commodity is treated as taking place if the commodity is electricity or gas covered by the scheme.
- (6) A special utility scheme may—
  - (a) cover all or any of the electricity or gas supplied by a utility for which the scheme is prepared;
  - (b) provide for paragraph 36 or 37 not to apply, or to apply with modifications, to electricity or gas covered by the scheme.
- (7) The Commissioners may by regulations make further provision with respect to special utility schemes, including (in particular) provision amending this paragraph.

*Other commodities: general rules for supply by UK residents*

- 30
- (1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).
  - (2) The general rules as to when such supplies are taken to be made are, in cases where the supply is made by a person resident in the United Kingdom, as follows—
    - (a) if the commodity is to be removed, the supply takes place at the time of the removal;
    - (b) if the commodity is not to be removed, the supply takes place when the commodity is made available to the person to whom it is supplied;
    - (c) if the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place, the supply takes place when it becomes certain that the supply has taken place or, if sooner, 12 months after the removal.
  - (3) These general rules are subject to—
    - paragraph 31 (earlier invoice),
    - paragraph 32 (later invoice),
    - paragraph 34 (deemed supplies), and
    - paragraph 36 (directions by Commissioners).

*Other commodities: earlier invoice*

- 31
- (1) If before the time applicable under paragraph 30(2) the person making the supply—
    - (a) issues an invoice in respect of the supply, or
    - (b) receives a payment in respect of it,the supply is treated, to the extent that it is covered by the invoice or payment, as taking place when the invoice is issued or the payment is received.

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- (2) Sub-paragraph (1) does not apply where the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place.
- (3) Sub-paragraph (1) applies subject to any direction under paragraph 35(3).

*Other commodities: later invoice*

- 32 (1) If within 14 days after the time applicable under paragraph 30(2) the person making the supply issues an invoice in respect of it, the supply is treated as taking place at the time the invoice is issued.
- (2) This does not apply—
  - (a) to the extent that the supply is treated as taking place at the time mentioned in paragraph 31(1) (earlier invoice), or
  - (b) if the person liable to account for any levy charged on the supply has notified the Commissioners in writing that he elects not to avail himself of sub-paragraph (1).
- (3) The Commissioners may, at the request of a person liable to account for any levy charged on any supplies, direct that sub-paragraph (1) shall apply—
  - (a) in relation to those supplies, or
  - (b) in relation to such of those supplies as may be specified in the direction, with the substitution for the period of 14 days of such longer period as may be specified in the direction.
- (4) Sub-paragraphs (1) to (3) apply subject to any direction under paragraph 35.

*Other commodities: supply by non-UK residents*

- 33 (1) This paragraph applies to supplies that—
  - (a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and
  - (b) are made by a person who is not resident in the United Kingdom.
- (2) The supply is treated as taking place—
  - (a) when the commodity is delivered to the person to whom it is supplied, or
  - (b) if earlier, when it is made available in the United Kingdom to that person.
- (3) Sub-paragraph (2) applies subject to—
  - (a) sub-paragraph (4),
  - (b) paragraph 34 (deemed supplies), and
  - (c) any direction under paragraph 35.
- (4) If within 14 days after the time applicable under sub-paragraph (2) the person to whom the supply is made elects in writing for the supply to be treated as taking place at the time the election is made, the supply is treated as taking place at the time the election is made.

*Other commodities: deemed supplies*

- 34 (1) This paragraph applies to supplies that—

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- (a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and
  - (b) are deemed to be made under paragraph 23 or 24.
- (2) A supply that is deemed to be made under paragraph 23 is treated as taking place when the commodity is burned (or, in the case of electricity, consumed).
- (3) A supply that is deemed to be made under paragraph 24 is treated as taking place upon the occurrence of the change in circumstances or intentions.

*Other commodities: directions by Commissioners*

- 35
- (1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).
  - (2) The Commissioners may, at the request of the person liable to account for any levy charged on any supplies to which this paragraph applies, make a direction under sub-paragraph (3) or (4) altering the time at which those supplies (or such of those supplies as may be specified in the direction) are to be treated as taking place.
  - (3) The Commissioners may direct that the supplies shall be treated as taking place—
    - (a) at times or on dates determined by or by reference to the occurrence of some event described in the direction, or
    - (b) at times or on dates determined by or by reference to the time when some event so described would in the ordinary course of events occur,provided the resulting times or dates are in every case earlier than would otherwise apply.
  - (4) The Commissioners may direct that the supplies shall be treated as taking place—
    - (a) at the beginning of the relevant working period (as defined in the case of the person making the request in and for the purposes of the direction), or
    - (b) at the end of the relevant working period (as so defined).
  - (5) A direction under sub-paragraph (4) shall not apply to the extent that the time when the supplies in question are made is determined by paragraph 31(1).

*Supplies invoiced or paid for before 1st April 2001*

- 36
- (1) This paragraph applies where—
    - (a) the taxable commodities covered by an invoice issued, or payment received, before 1st April 2001 are to any extent commodities that have not been burned (or, in the case of electricity, consumed) before the invoice is issued or payment is received, and
    - (b) the advance invoicing or payment is not acceptable normal practice.

It does not matter whether the invoice mentioned in paragraph (a) is, or is not, a climate change levy accounting document.
  - (2) A fair apportionment shall be made to determine the quantity of the taxable commodities covered by the invoice or payment that will not be, or was not, burned (or consumed) before 1st April 2001.
  - (3) Where this paragraph applies, a supply is treated as taking place on 1st April 2001.

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That supply is a supply of the quantity of the taxable commodities that is mentioned in, and determined under, sub-paragraph (2).

- (4) For the purposes of this paragraph advance invoicing or payment is “acceptable normal practice” if—
- (a) the supply is of a kind in the case of which it is normal practice for invoices to be issued, or payments made, in respect of taxable commodities not already burned (or consumed),
  - (b) that practice does not involve issuing invoices, or making payments, more than 15 weeks in advance of the burning (or consumption) of any of the taxable commodities in respect of which the invoice is issued or payment is made, and
  - (c) the advance invoicing or payment is in accordance with the practice.
- (5) Nothing in paragraph 27 requires a climate change levy accounting document to be issued to cover any commodities that are supplied by a supply that, under sub-paragraph (3), is treated as made on 1st April 2001.
- (6) This paragraph applies to invoices issued, and payments received, before the passing of this Act (as well as to those issued or received after its passing).

*Supplies of electricity or gas spanning change of rate etc.*

- 37 (1) This paragraph applies in the case of a supply of electricity, or of gas that is in a gaseous state and is of a kind supplied by a gas utility, affected by—
- (a) a change in the descriptions of supplies that are taxable supplies,
  - (b) a change in any rate of levy in force,
  - (c) a change consisting in the rate of levy applicable to the supply ceasing to be, or becoming, the rate that is applicable to half-rate supplies or reduced-rate supplies, or
  - (d) the change consisting in the transition from 31st March 2001 to 1st April 2001.

- (2) For the purposes of this paragraph a supply is affected by a change if the electricity or gas of which it is a supply (“the supplied commodity”) is actually supplied partly before the change and partly after.

However, this paragraph does not apply in the case of a supply that, under paragraph 36(3), is treated as made on 1st April 2001.

- (3) If the person liable to account for any levy on the supply so elects—
- (a) the rate at which levy is chargeable on any part of the supply, or
  - (b) any question whether, or to what extent, the supply is a taxable supply,
- shall be determined in accordance with sub-paragraph (5) or (6).
- (4) An election for determination in accordance with sub-paragraph (6) may be made only where—
- (a) there is such a change as is mentioned in sub-paragraph (1)(c), and
  - (b) all the supplied commodity is actually supplied before the supply is treated as taking place.
- (5) Where the election is for determination in accordance with this sub-paragraph, the rules are—



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- (A) Treat the fraction of the supplied commodity actually supplied before the change (“the pre-change fraction”) as supplied by a supply made before the change and treat the fraction of the supplied commodity actually supplied after the change (“the post-change fraction”) as supplied by a supply made after the change.
- (B) Where the pre-change and post-change fractions are not known (because, for example, there are no relevant meter readings available)—
- “the pre-change fraction” is calculated by dividing—
- (a) the number of days in the period over which the supply is actually made that fall before the change, by
  - (b) the number of days in that period; and
- “the post-change fraction” is the difference between 1 and the pre-change fraction.
- (C) If use of the fractions given by rule B would produce an inequitable result, the pre-change and post-change fractions may be derived from a reasonable estimate of the fractions of the supplied commodity actually supplied before and after the change.
- (6) Where the election is for determination in accordance with this sub-paragraph, treat the change as taking place immediately after the time at which the last of the supplied commodity was actually supplied.

*Other supplies spanning change of rate etc.*

- 38 (1) This paragraph applies where there is—
- (a) a change in the descriptions of supplies that are taxable supplies,
  - (b) a change in the rate of levy in force,
  - (c) a change consisting in the rate of levy applicable to any supply ceasing to be, or becoming, the rate that is applicable to half-rate supplies or reduced-rate supplies, or
  - (d) the change consisting in the transition from 31st March 2001 to 1st April 2001.
- (2) Where—
- (a) a supply affected by the change would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would not have been affected by the change, or
  - (b) a supply not so affected would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would have been so affected,
- the rate at which levy is chargeable on the supply, or any question whether it is a taxable supply, shall, if the person liable to account for any levy on the supply so elects, be determined without regard to the special provisions.
- (3) In this paragraph “special provisions” means the provisions of paragraphs 31, 32, 33(4) and 35.

*Regulations as to time of supply*

- 39 (1) The Commissioners may make provision by regulations as to the time at which a supply is to be treated as taking place—

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- (a) in cases where the supply is for a consideration and the whole or part of the consideration—
    - (i) is determined or payable periodically, or from time to time, or at the end of any period, or
    - (ii) is determined at the time when the commodity is appropriated for any purpose;
  - (b) in the case of a supply otherwise than for consideration;
  - (c) in the case of any supply that is deemed to be made under paragraph 23 or 24.
- (2) In any such case as is mentioned in sub-paragraph (1) the regulations may provide that a taxable commodity shall be treated as separately and successively supplied at prescribed times or intervals.
- (3) Paragraphs 26 to 36 (main rules as to time of supply) have effect subject to any regulations under this paragraph.
- (4) The power to make regulations under this paragraph includes power to provide for specified provisions of the regulations to be treated as special provisions for the purposes of paragraph 38 (supplies spanning change of rate etc.).

## PART IV

### PAYMENT AND RATE OF LEVY

#### *Persons liable to account for levy*

- 40 (1) The person liable to account for the levy charged on a taxable supply is, except in a case where sub-paragraph (2) applies, the person making the supply.
- (2) In the case of a taxable supply made by a person who—
- (a) is not resident in the United Kingdom, and
  - (b) is not a utility,
- the person liable to account for the levy charged on the supply is the person to whom the supply is made.

#### *Returns and payment of levy*

- 41 (1) The Commissioners may by regulations make provision—
- (a) for persons liable to account for levy to do so by reference to such periods (“accounting periods”) as may be determined by or under the regulations;
  - (b) for persons who are or are required to be registered for the purposes of the levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and
  - (c) for persons who are required to account for levy for any period to become liable to pay the amounts due from them at such times and in such manner as may be so determined.
- (2) Without prejudice to the generality of the powers conferred by sub-paragraph (1), regulations under this paragraph may contain provision—

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- (a) for levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period;
  - (b) for the correction of errors made when accounting for levy by reference to any period;
  - (c) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;
  - (d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;
  - (e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d);
  - (f) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under section 197 of the Finance Act 1996 for such period as may be determined in accordance with the regulations.
- (3) Subject to the following provisions of this paragraph, if any person (“the taxpayer”) fails—
- (a) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to make a return for any accounting period, or
  - (b) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to pay an amount of levy due from him,
- he shall be liable to a penalty of £250.
- (4) Liability to a penalty under sub-paragraph (3) shall not arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal—
- (a) that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with the regulations; and
  - (b) that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without a reasonable excuse to make it.
- (5) Where, by reason of any failure falling within paragraph (a) or (b) of sub-paragraph (3)—
- (a) a person is convicted of an offence (whether under this Schedule or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 98 (penalty for evasion),
- that person shall not, by reason of that failure, be liable also to a penalty under that sub-paragraph (3).

*Amount payable by way of levy*

- 42 (1) The amount payable by way of levy on a taxable supply is—
- (a) if the supply is neither a half-rate supply nor a reduced-rate supply, the amount ascertained from the Table in accordance with sub-paragraph (2);

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- (b) if the supply is a half-rate supply, 50 per cent. of the amount that would be payable if the supply were neither a half-rate supply nor a reduced-rate supply;
- (c) if the supply is a reduced-rate supply, 20 per cent. of the amount that would be payable if the supply were neither a half-rate supply nor a reduced-rate supply.

TABLE

<i>Taxable commodity supplied</i>	<i>Rate at which levy payable if supply is neither a half-rate supply nor a reduced-rate supply</i>
Electricity.....	£0.0043 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility.....	£0.0015 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state.....	£0.0096 per kilogram
Any other taxable commodity.....	£0.0117 per kilogram

- (2) The levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity.

*Half-rate for supplies to horticultural producers*

- 43 (1) For the purposes of this Schedule a half-rate supply is a taxable supply in respect of which the following conditions are satisfied—
- (a) the first condition is that the person to whom the supply is made is a horticultural producer;
  - (b) the second condition is that the horticultural producer intends to use the taxable commodity supplied—
    - (i) in the heating, for the growth of horticultural produce primarily with a view to the production of horticultural produce for sale, of any building or structure, or of the earth or other growing medium in it,
    - (ii) in the lighting, for the growth of horticultural produce primarily with a view to the production of horticultural produce for sale, of any building or structure, or
    - (iii) in the sterilisation of the earth or other growing medium to be used for the growth of horticultural produce as mentioned in subparagraph (i) in any building or structure.
- (2) In this paragraph “horticultural producer” means a person growing horticultural produce primarily for sale.
- (3) In this paragraph “horticultural produce” means—
- (a) fruit;

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- (b) vegetables of a kind grown for human consumption, including fungi, but not including maincrop potatoes or peas grown for seed, for harvesting dry or for vining;
  - (c) flowers, pot plants and decorative foliage;
  - (d) herbs;
  - (e) seeds other than pea seeds, and bulbs and other material, being seeds, bulbs or material for sowing or planting for the production of—
    - (i) fruit,
    - (ii) vegetables falling within paragraph (b),
    - (iii) flowers, plants or foliage falling within paragraph (c), or
    - (iv) herbs,or for reproduction of the seeds, bulbs or other material planted; or
  - (f) trees and shrubs, other than trees grown for the purpose of afforestation; but does not include hops.
- (4) The Commissioners may by regulations make provision for facilitating the enjoyment of the reduced rate of levy payable on half-rate supplies.
- (5) Regulations under sub-paragraph (4) may, in particular, include provision—
- (a) for determining the extent to which a taxable supply is, or is to be treated as being, a half-rate supply;
  - (b) for authorising a person making taxable supplies to another person to treat the supplies to that other person as being half-rate supplies only to an extent certified by the Commissioners;
  - (c) for a person making half-rate supplies (“the supplier”) to account for levy on those supplies as if the supplies were neither half-rate supplies nor reduced-rate supplies.
- (6) Provision such as is mentioned in sub-paragraph (5)(c) may be made only where tax credit regulations provide for a horticultural producer to be entitled to a tax credit in respect of 50 per cent. of the levy accounted for by the supplier on any half-rate supplies—
- (a) that are made by the supplier to the horticultural producer, and
  - (b) on which the supplier has accounted for levy on the basis mentioned in sub-paragraph (5)(c).

*Reduced-rate for supplies covered by climate change agreement*

- 44 (1) Where the Secretary of State gives a certificate to the Commissioners stating that, for a period specified in the certificate, a facility is to be taken as being covered by a climate change agreement, the Commissioners shall publish a notice in respect of the facility.
- (2) Such a notice shall—
- (a) state the day on which it is published,
  - (b) identify the facility or facilities in respect of which it is published,
  - (c) for each facility—
    - (i) set out the first and last days of the period specified for the facility in the Secretary of State’s certificate, and
    - (ii) indicate the effect of sub-paragraph (3),

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and

(d) indicate that the notice may be varied by later notices.

- (3) For the purposes of this Schedule, a reduced-rate supply is a taxable supply in respect of which the following conditions are satisfied—
- (a) the first condition is that the taxable commodity supplied by the supply is supplied to a facility identified in a notice published under sub-paragraph (1);
  - (b) the second condition is that the supply is made at a time falling in the period that begins with the later of—
    - (i) the first day set out for the facility under sub-paragraph (2)(c), and
    - (ii) the day on which the notice is published,
 and ends with the last day set out for the facility under sub-paragraph (2)(c).
- (4) Sub-paragraph (3) has effect subject to paragraph 45.
- (5) The Commissioners may, for the purposes of sub-paragraph (3), by regulations make provision for determining whether any taxable commodity is supplied to a facility.
- (6) The provision that may be made by regulations under sub-paragraph (5) includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility.

*Reduced-rate supplies: variation of notices under paragraph 44*

- 45 (1) This paragraph applies where the Secretary of State, after having given in respect of a facility such a certificate as is mentioned in paragraph 44(1) (“the original certificate”), gives a certificate (a “variation certificate”) to the Commissioners stating—
- (a) that, throughout the period (“the original period”) specified for the facility in the original certificate, the facility is to be taken as not being covered by a climate change agreement; or
  - (b) that, for so much of the original period as falls on or after a day specified in the variation certificate (being a day falling within the original period), the facility is to be taken as no longer being covered by a climate change agreement.
- (2) Where the Commissioners receive a variation certificate in respect of a facility before they have published a notice under paragraph 44(1) in response to the original certificate so far as relating to the facility, their obligation to publish a notice under paragraph 44(1) in respect of the facility shall have effect as an obligation to publish such a notice in response to the original certificate as varied by the variation certificate.
- (3) Where the Commissioners receive a variation certificate but sub-paragraph (2) does not apply, they shall publish a notice (a “variation notice”) that—
- (a) states the day on which it is published,
  - (b) identifies the facility or facilities in respect of which it is published,
  - (c) sets out, for each facility in respect of which the statement in the variation certificate is of the type described in sub-paragraph (1)(b), the date specified for the facility in the variation certificate, and

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- (d) for each facility, indicates the effect of sub-paragraphs (4) to (7) as they apply in the case of the facility.
- (4) Sub-paragraphs (5) to (7) set out the effect of a variation notice being published in respect of a facility.
- (5) If—
- (a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and
  - (b) the day on which the variation notice is published falls before the beginning of the original period,
- the notice (“the original notice”) published under paragraph 44(1) in response to the original certificate has effect as if the facility had never been identified in it.
- (6) If—
- (a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and
  - (b) the day on which the variation notice is published falls during the original period,
- the original notice has effect as if the last day set out for the facility under paragraph 44(2)(c) were the day on which the variation notice is published.
- (7) If the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(b), the original notice has effect as if the last day set out for the facility under paragraph 44(2)(c) were the later of—
- (a) the day on which the variation notice is published, and
  - (b) the day set out in the variation notice for the facility under sub-paragraph (3)(c).

#### *Climate change agreements*

- 46 In this Schedule “climate change agreement” means—
- (a) an agreement that falls within paragraph 47, or
  - (b) a combination of agreements that falls within paragraph 48.

#### *Climate change agreements: direct agreement with Secretary of State*

- 47 (1) An agreement (including one entered into before the passing of this Act) falls within this paragraph if it is an agreement—
- (a) entered into with the Secretary of State,
  - (b) expressed to be entered into for the purposes of the reduced rate of climate change levy,
  - (c) identifying the facilities to which it applies,
  - (d) to which a representative of each facility to which it applies is a party,
  - (e) setting, or providing for the setting of, targets for the facilities to which it applies,
  - (f) specifying certification periods (as to which see paragraph 49(1)) for the facilities to which it applies, and
  - (g) providing for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreement for those facilities and for giving effect to outcomes of such reviews.

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- (2) In this paragraph and paragraph 48 “representative”, in relation to a facility to which an agreement applies, means—
- (a) the person who is the operator of the facility at—
    - (i) the time the agreement is entered into, or
    - (ii) if later, the time the facility last became a facility to which the agreement applies,
  - or
  - (b) a person authorised by that operator to agree to the facility being a facility to which the agreement applies.

*Climate change agreement: combination of umbrella and underlying agreements*

- 48 (1) A combination of agreements falls within this paragraph if the following conditions are satisfied.
- (2) The first condition is that the combination is a combination of—
- (a) an umbrella agreement (including one entered into before the passing of this Act), and
  - (b) an agreement (including one entered into before the passing of this Act) that, in relation to the umbrella agreement, is an underlying agreement.
- (3) The second condition is that between them the two agreements—
- (a) set, or provide for the setting of, targets for the facilities to which the underlying agreement applies,
  - (b) specify certification periods (as to which see paragraph 49(1)) for the facilities to which the underlying agreement applies, and
  - (c) provide for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreements for those facilities and for giving effect to outcomes of such reviews.
- (4) For the purposes of this paragraph an “umbrella agreement” is an agreement—
- (a) entered into with the Secretary of State,
  - (b) expressed to be entered into for the purposes of the reduced rate of climate change levy,
  - (c) identifying the facilities to which it applies, and
  - (d) to which a representative of each facility to which it applies is a party.
- (5) For the purposes of this paragraph an agreement is an “underlying agreement” in relation to an umbrella agreement if it is an agreement—
- (a) expressed to be entered into for the purposes of the umbrella agreement,
  - (b) entered into—
    - (i) with the Secretary of State, or
    - (ii) with a party to the umbrella agreement other than the Secretary of State,
  - (c) approved by the Secretary of State if he is not a party to it,
  - (d) identifying which of the facilities to which the umbrella agreement applies are the facilities to which it applies, and
  - (e) to which a representative of each facility to which it applies is a party.



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- (6) In the case of a climate change agreement that is a combination of agreements that falls within this paragraph, references to the facilities to which the climate change agreement applies are references to the facilities to which the underlying agreement applies.

*Climate change agreement: supplemental provisions*

- 49 (1) The first certification period specified by a climate change agreement for a facility to which it applies shall begin with the later of—
- (a) the date on which the agreement, so far as relating to the facility, is expressed to take effect, and
  - (b) 1st April 2001;
- and each subsequent certification period so specified shall begin immediately after the end of a previous certification period.
- (2) Where a climate change agreement (the “new agreement”) applies to a facility to which another climate change agreement previously applied, the first certification period specified by the new agreement for the facility shall be—
- (a) a period beginning as provided by sub-paragraph (1), or
  - (b) a period that—
    - (i) begins earlier than that, and
    - (ii) is a period that was a certification period specified for the facility by any climate change agreement that previously applied to the facility.
- A period such as is mentioned in paragraph (b) includes a period beginning, or beginning and ending, before the date on which the new agreement, so far as relating to the facility, is expressed to take effect.
- (3) For the purposes of giving certificates such as are mentioned in paragraphs 44(1) and 45(1), the Secretary of State may take a facility as being covered by a climate change agreement for a period if the facility is one to which the agreement applies and either—
- (a) that period is the first certification period specified by the agreement for the facility, or
  - (b) that period is a subsequent certification period for the facility and it appears to the Secretary of State that progress made in the immediately preceding certification period towards meeting targets set for the facility by the agreement or by a climate change agreement that previously applied to the facility is, or is likely to be, such as under the provisions of the agreement in question is to be taken as being satisfactory.
- (4) For the purposes of sub-paragraph (3)(b) a climate change agreement may (in particular) provide that progress towards meeting any targets for a facility is to be taken as being satisfactory if, in the absence (or partial absence) of any such progress required under the agreement, alternative requirements provided for by the agreement are satisfied.
- (5) For the purposes of sub-paragraphs (2) and (3), the circumstances in which a facility to which a climate change agreement applies is one to which another such agreement previously applied include those where the facility is—

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- (a) a part, or a combination of parts, of a facility to which another such agreement previously applied,
  - (b) a combination of two or more such facilities,
  - (c) any combination of parts of such facilities, or
  - (d) any combination of such facilities and parts of such facilities.
- (6) Paragraphs 47 and 48 and sub-paragraph (4) above are not to be taken as meaning that an agreement, or combination of agreements, containing provision in addition to any mentioned in those paragraphs and that sub-paragraph is not a climate change agreement.
- (7) For the purposes of paragraphs 47 and 48 and this paragraph “target”, in relation to a facility to which a climate change agreement applies, means a target relating to—
- (a) energy, or energy derived from a source of any description, used in the facility or an identifiable group of facilities within which the facility falls, or
  - (b) emissions, or emissions of any description, from the facility or such a group of facilities;
- and for this purpose “identifiable group” means a group that is identified in the agreement or that at any relevant time can be identified under the agreement.
- (8) Nothing in this Schedule is to be taken as requiring the Secretary of State to—
- (a) enter into any climate change agreement,
  - (b) enter into a climate change agreement with any particular person or persons, in respect of any particular facility or facilities or on any particular terms, or
  - (c) approve any, or any particular, proposed climate change agreement.

*Facilities to which climate change agreements can apply*

- 50 (1) This paragraph applies where, in connection with concluding or varying a climate change agreement, it falls to be determined whether a facility is to be, or is to continue to be, identified in the agreement as a facility to which the agreement applies.
- (2) For the purposes of such a determination “facility” is (subject to any regulations under sub-paragraph (3) or (4)) to be taken as meaning—
- (a) an installation covered by paragraph 51; or
  - (b) a site on which there is or are—
    - (i) such an installation or two or more such installations,
    - (ii) a part, or parts, of such an installation,
    - (iii) a part, or parts, of each of two or more such installations, or
    - (iv) any combination of such installations and parts of such installations.
- (3) The Secretary of State may by regulations make provision for an installation covered by paragraph 51 to be taken to be a facility for those purposes only if—
- (a) the taxable commodities supplied to the installation by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—
    - (i) in the installation, or
    - (ii) on the site where the installation is situated but not in the installation,
 and
  - (b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.

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- (4) The Secretary of State may by regulations make provision for a site to be taken to be a facility for those purposes only if—
- (a) the taxable commodities supplied to the site by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—
    - (i) in installations on the site that are covered by paragraph 51 (or in parts of such installations), or
    - (ii) on the site but not in any such installation (or part of such an installation),
  - and
  - (b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.
- (5) Regulations under sub-paragraph (3) or (4) may make provision for deeming, for the purposes of the regulations, commodities to be intended to be burned (or, in the case of electricity, consumed) in circumstances specified in the regulations.
- (6) In this paragraph and paragraph 51 “installation” means a stationary technical unit.

*Energy-intensive installations*

51 (1) An installation is covered by this paragraph if it falls within any one or more of the descriptions of installation set out in the Table.

[<sup>F12</sup>(2) Sub-paragraph (2A) applies where—

- (a) an installation falls within any one or more of those descriptions, and
- (b) there is, on the same site as the installation, a location at which ancillary activities are carried out.

(2A) The installation (taken alone) is not covered by this paragraph, but the combination—

- (a) of the installation and that location, or
- (b) where there is more than one such location, of the installation and all of those locations,

is to be taken as being an installation covered by this paragraph.

(2B) In sub-paragraph (2) “ancillary activities” means activities that—

- (a) are directly associated with any of the primary activities carried out in the installation,
- (b) have a technical connection with those primary activities, and
- (c) could have an effect on environmental pollution.]

(3) [<sup>F13</sup>sub-paragraphs (1) to (2B)] are subject to any regulations under paragraph 52.

<sup>F14</sup>(4) .....

<sup>F14</sup>(5) .....

(6) [<sup>F15</sup>sub-paragraph (2B)]—

“environmental pollution” has the same meaning as in the <sup>M12</sup>Pollution Prevention and Control Act 1999;

“primary activity”, in relation to an installation falling within any one or more of the descriptions of installation set out in the Table, means an activity

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the carrying out of which at the installation results in the installation falling within one or more of those descriptions.<sup>F16</sup>

*"Installations regulated under the Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973)*

1. Part A installations.

*Installations that would be so regulated but for a threshold or exception*

2. Installations that would be Part A installations but for—  
(a) a relevant numeric threshold, or  
(b) a relevant exception.

*Installations that would be so regulated if certain modifications were made to the Regulations*

3. Installations that would be Part A installations if the relevant modifications were made.

*Corresponding installations in Scotland and Northern Ireland*

4. Installations that are situated in Scotland or Northern Ireland, but if situated in England and Wales—

(a) would be Part A installations,  
(b) would be Part A installations but for—  
(i) a relevant numeric threshold, or  
(ii) a relevant exception, or  
(c) would be Part A installations if the relevant modifications were made.

*Interpretation of entries 1 to 4*

5.—(1) In this entry "the Schedule" means Schedule 1 to the Pollution Prevention and Control (England and Wales) Regulations 2000(a).

(2) In entries 1 to 4—

(a) "Part A installation" has the meaning given in Part 3 of the Schedule;  
(b) "relevant exception" means—  
(i) the exception in paragraph (b)(i) of Part A(1) of Section 2.1 of Part 1 of the Schedule;  
(ii) the exceptions in paragraph (c) of Part A(1) of Section 5.1 of Part 1 of the Schedule for activities falling within Part B of that Section and for the incineration of specified hazardous waste in an exempt incineration plant, or  
(iii) the exception in paragraph (e) of Part A(1) of Section 5.1 of Part 1 of the Schedule for incineration as part of a Part B activity in so far as this exception relates to the activities referred to in paragraphs (a) and (b) of Part B of that Section;  
(c) "the relevant modifications" means the omission of the following provisions of Part 1 of the Schedule:  
(i) the final twelve words of paragraph (b) of Part A(1) of Section 4.4;  
(ii) the final twelve words of paragraph (b) of Part A(1) of Section 4.5;  
(iii) paragraph 1 of the Interpretation of Part A(1) of Section 5.4;

(iv) the final fourteen words of paragraph (c) of Part A(1) of Section 6.1;  
(v) the final fourteen words of paragraph (c) of Part A(1) of Section 6.4; and  
(vi) the final fourteen words of paragraph (9)(ii) of Part A(1) of Section 6.8; and  
(d) "relevant numeric threshold" means a numeric threshold specified in any of the following provisions of Part 1 of the Schedule:  
(i) paragraphs (c) and (d) of Part A(1) of Section 2.1;  
(ii) Part A(2) of Section 2.1;  
(iii) paragraph (b) of Part A(1) of Section 2.2;  
(iv) Part A(1) of Section 2.3;  
(v) paragraph (b) of Part A(1) of Section 3.1;  
(vi) paragraph (b) of Part A(2) of Section 3.1;  
(vii) paragraph (b) of Part A(1) of Section 3.3;  
(viii) Part A(2) of Section 3.3;  
(ix) paragraph (a) of Part A(1) of Section 3.4;  
(x) Part A(2) of Section 3.6;  
(xi) paragraphs (c) and (d) of Part A(1) of Section 4.1;  
(xii) paragraphs (d) and (e) of Part A(1) of Section 5.1;  
(xiii) Part A(1) of Section 5.2;  
(xiv) Part A(1) of Section 5.3;  
(xv) paragraph (c) of Part A(1) of Section 5.4;  
(xvi) paragraph (b) of Part A(1) of Section 6.1;  
(xvii) Part A(1) of Section 6.2;  
(xviii) paragraphs (a) and (b) of Part A(1) of Section 6.4;  
(xix) Part A(2) of Section 6.4;  
(xx) Part A(2) of Section 6.7;  
(xxi) paragraphs (a) to (e) of Part A(1) of Section 6.8;  
(xxii) Part A(2) of Section 6.8; and  
(xxiii) Part A(1) of Section 6.9; and  
(e) any reference to a part of the United Kingdom includes the territorial waters adjacent to that part."

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### Textual Amendments

- F12** Sch. 6 para. 51(2)(2A)(2B) substituted for Sch. 6 para. 51(2) (23.3.2001) by S.I. 2001/1139, reg. 2(2)  
**F13** Words in Sch. 6 para. 51(3) substituted (23.3.2001) by S.I. 2001/1139, reg. 2(3)  
**F14** Sch. 6 para. 51(4)(5) omitted (23.3.2001) by S.I. 2001/1139, reg. 2(4)  
**F15** Words in Sch. 6 para. 51(6) substituted (23.3.2001) by S.I. 2001/1139, reg. 2(5)  
**F16** Sch. 6 para. 51: Table entries 1-5 substituted for entries 1-33 (23.3.2001) by S.I. 2001/1139, reg. 2(6)

### Marginal Citations

- M12** 1999 c. 24.

### Power to vary the installations covered by paragraph 51

- 52 (1) The Treasury may make provision by regulations for varying the installations covered by paragraph 51.

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- (2) The provision that may be made by regulations under this paragraph includes, in particular, provision—
- (a) for the installations covered by paragraph 51 to include, or not to include, any installation of a description specified in the regulations;
  - (b) amending the Table in paragraph 51 by adding a description of installation to the Table, removing a description of installation from the Table or altering a description of installation set out in the Table;
  - (c) amending paragraph 51.

PROSPECTIVE

## PART V

### REGISTRATION

#### *Requirement to be registered*

- 53 (1) A person is required to be registered with the Commissioners for the purposes of the levy if a taxable supply is made in respect of which he is the person liable to account for the levy charged.
- (2) The Commissioners shall, for the purposes of sub-paragraph (1) and in accordance with the provisions of this Part of this Schedule, establish and maintain a register of persons liable to account for levy.
- (3) The Commissioners shall keep such information in the register as they consider appropriate for the care and management of the levy.
- [<sup>F17</sup>(4) Regulations made by the Commissioners may provide that, in such cases or circumstances and subject to such conditions or requirements as may be prescribed in the regulations, the Commissioners may exempt a person from the requirement to be registered.]

#### **Textual Amendments**

**F17** Sch. 6 para. 53(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 192(3)

#### *Interpretation of Part V*

- 54 In this Part of this Schedule—
- (a) references to the register are references to the register maintained under paragraph 53(2);
  - (b) references to registering a person are references to registering him in that register; and
  - (c) references to a person's registration are references to his registration in that register.

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*Notification of registrability etc.*

- 55 (1) A person who—
- (a) intends to make, or have made to him, any taxable supply in respect of which (if made) he will be the person liable to account for the levy charged, or
  - <sup>F18</sup>(aa) expects to be deemed to make a taxable supply to himself under paragraph 24A or 24B, or]
  - (b) is required to be registered for the purposes of the levy,
- shall (if he is not so registered) notify the Commissioners of that fact.

<sup>F19</sup>(2) .....

<sup>F19</sup>(3) .....

<sup>F19</sup>(4) .....

<sup>F19</sup>(5) .....

<sup>F19</sup>(6) .....

**Textual Amendments**

**F18** Sch. 6 para. 55(1)(aa) inserted (retrospective to 26.3.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 42 paras. 15, 21](#)

**F19** Sch. 6 para. 55(2)-(6) omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 123(2), [Sch. 41 para. 25\(k\)\(ii\)](#); S.I. 2009/511, art. 2 (with art. 4)

*Form of registration*

- 56 (1) The Commissioners shall register a person if—
- (a) they receive from him a notification given in pursuance of paragraph 55, or
  - (b) although they have not received from him such a notification, it appears to them that he is required to be registered.

Where the Commissioners register a person who is required to be registered, they shall register him with effect from the time when the requirement arose.

- (2) Where any two or more bodies corporate are members of the same group they shall be registered together as one person in the name of the representative member.
- (3) The registration of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.
- (4) The registration of—
  - (a) any two or more persons carrying on a business in partnership, or
  - (b) an unincorporated body,
 may be in the name of the firm or body concerned.

*Notification of loss or prospective loss of registrability*

- 57 (1) Where a person who has become liable to give a notification by virtue of paragraph 55 ceases (whether before or after being registered for the purposes of the levy) to

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intend to make, or to intend to have made to him, taxable supplies in respect of which (if made) he would be the person liable to account for the levy charged, he shall notify the Commissioners of that fact.

- (2) A person who fails to comply with sub-paragraph (1) shall be liable to a penalty of £250.

#### *Cancellation of registration*

- 58 (1) If the Commissioners are satisfied that a registered person—
- (a) has ceased to make, or have made to him, taxable supplies on which he is liable to account for the levy charged, and
  - (b) does not intend to make, or have made to him, any such supplies,
- they may cancel his registration with effect from such time after he last made, or had made to him, taxable supplies as appears to them to be appropriate.
- (2) Sub-paragraph (1) applies whether or not the registered person has notified the Commissioners under paragraph 57.
- (3) The Commissioners shall be under a duty to exercise the power conferred by sub-paragraph (1) with effect from any time if, where the power is exercisable, they are satisfied that the conditions specified in sub-paragraph (4) are satisfied and were or will be satisfied at that time.
- (4) Those conditions are—
- (a) that the person in question has given a notification under paragraph 57;
  - (b) that no levy due from that person, and no amount recoverable as if it were levy, remains unpaid;
  - (c) that no tax credit to which that person is entitled by virtue of any tax credit regulations is outstanding; and
  - (d) that that person is not subject to any outstanding liability to make a return for the purposes of the levy.
- (5) Where—
- (a) a registered person notifies the Commissioners under paragraph 57, and
  - (b) they are satisfied that (if he had not been registered) he would not have been required to be registered at any time since the time when he was registered,
- they shall cancel his registration with effect from the date of his registration.

#### *Correction of the register etc.*

- 59 (1) The Commissioners may by regulations make provision for and with respect to the correction of entries in the register.
- (2) Regulations under this paragraph may, to such extent as appears to the Commissioners appropriate for keeping the register up to date, make provision requiring—
- (a) registered persons, and
  - (b) persons who are required to be registered,
- to notify the Commissioners of changes in circumstances relating to themselves, their businesses or any other matter with respect to which particulars are contained in the register (or would be, were the person registered).

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### *Supplemental regulations about notifications*

- 60 (1) For the purposes of any provision made by or under this Part of this Schedule for any matter to be notified to the Commissioners, regulations made by the Commissioners may make provision—
- (a) as to the time within which the notification is to be given;
  - (b) as to the form and manner in which the notification is to be given; and
  - (c) as to the information and other particulars to be contained in or provided with any notification.
- (2) For those purposes the Commissioners may also by regulations impose obligations requiring a person who has given a notification to notify the Commissioners if any information contained in or provided in connection with that notification is or becomes inaccurate.
- (3) The power under this paragraph to make regulations as to the time within which any notification is to be given shall include power to authorise the Commissioners to extend the time for the giving of a notification.

### *Publication of information on the register*

- 61 (1) The Commissioners may publish, by such means as they think fit, any information which—
- (a) is derived from the register; and
  - (b) falls within any of the descriptions set out below.
- (2) The descriptions are—
- (a) the names of registered persons;
  - (b) the fact (where it is the case) that the registered person is a body corporate which is a member of a group;
  - (c) the names of the other bodies corporate which are members of the group.
- (3) Information may be published in accordance with this paragraph notwithstanding any obligation not to disclose the information that would otherwise apply.

## **PART VI**

### **CREDITS AND REPAYMENTS**

#### *Tax credits*

- 62 (1) The Commissioners may, in accordance with the following provisions of this paragraph, by regulations make provision in relation to cases where—
- (a) after a taxable supply has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would not have been a taxable supply;
  - (b) after a supply of a taxable commodity is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;



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- (c) after a taxable supply has been made on the basis that it was neither a half-rate supply nor a reduced-rate supply, it is determined that the supply was (to any extent) a half-rate or reduced-rate supply;
  - (d) levy is accounted for on a half-rate supply as if the supply were neither a half-rate supply nor a reduced-rate supply;
  - (e) after a charge to levy has arisen on a supply of a taxable commodity (“the original commodity”) to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity;
  - (f) after a person has become entitled to a debt as a result of making a taxable supply, the debt turns out to be bad (in whole or in part);
  - (g) the making of a taxable supply gives rise to a double charge to levy within the meaning of paragraph 21.
- (2) The provision that may be made in relation to any such case as is mentioned in sub-paragraph (1) is provision—
- (a) for such person as may be specified in the regulations to be entitled to a tax credit in respect of any levy charged on the supply (or, in such a case as is mentioned in sub-paragraph (1)(g), one of the supplies) in question;
  - (b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for levy due from him for such accounting period or periods as may be determined in accordance with the regulations; and
  - (c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to levy, to a repayment of levy of an amount so determined.
- (3) Regulations under this paragraph may contain any or all of the following provisions—
- (a) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed;
  - (b) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such requirements (including the making of a claim) as may be determined in accordance with the regulations;
  - (c) provision requiring a claim for a tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined;
  - (d) provision requiring a person claiming any entitlement to a tax credit to keep, for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined;
  - (e) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with;
  - (f) provision for interest at the rate applicable under section 197 of the Finance Act 1996 to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit;
  - (g) provision for determining whether, and to what extent, a debt is to be taken as bad;

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- (h) provision for the withdrawal of a tax credit to which a person has become entitled in a case within sub-paragraph (1)(f) where any part of the debt that has been taken to be bad falls to be regarded as not having been bad;
  - (i) provision for determining whether, and to what extent, any part of a debt that has been taken to be bad should be regarded as not having been bad;
  - (j) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners.
- (4) Regulations made under this paragraph shall have effect subject to the provisions of paragraph 64.

*Repayments of overpaid levy*

- 63 (1) Where a person has paid an amount to the Commissioners by way of levy which was not levy due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall not be liable to repay an amount under this paragraph if, or to the extent that, any person has become entitled to a tax credit in respect of that amount by virtue of tax credit regulations.
- (3) The Commissioners shall not be liable to repay an amount under this paragraph except on the making of a claim for that purpose.
- (4) A claim under this paragraph must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners.
- (5) The preceding provisions of this paragraph are subject to the provisions of paragraph 64.
- (6) Except as provided by this paragraph or tax credit regulations, the Commissioners shall not, by virtue of the fact that it was not levy due to them, be liable to repay any amount paid to them by way of levy.

*Supplemental provisions about repayments etc.*

- 64 (1) The Commissioners shall not be liable, on any claim for a repayment of levy, to repay any amount paid to them more than three years before the making of the claim.
- (2) It shall be a defence to any claim for a repayment of an amount of levy that the repayment of that amount would unjustly enrich the claimant.
- (3) Sub-paragraph (4) applies for the purposes of sub-paragraph (2) where—
- (a) there is an amount paid by way of levy which (apart from sub-paragraph (2)) would fall to be the subject of a repayment of levy to any person (“person A”); and
  - (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than person A.
- (4) Where, in a case to which this sub-paragraph applies, loss or damage has been or may be incurred by person A as a result of mistaken assumptions made in his case about the operation of any provisions relating to levy, that loss or damage shall be

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disregarded, except to the extent of the quantified amount, in the making of any determination as to—

- (a) whether or to what extent the repayment of an amount to person A would enrich him; or
  - (b) whether or to what extent any enrichment of person A would be unjust.
- (5) In sub-paragraph (4) “the quantified amount” means the amount (if any) which is shown by person A to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions.
- (6) The reference in sub-paragraph (4) to provisions relating to levy is a reference to any provisions of—
- (a) any enactment or subordinate legislation (whether or not still in force) which relates to the levy or to any matter connected with it; or
  - (b) any notice published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to the levy.

#### *Reimbursement arrangements*

- 65 (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of paragraph 64(2) except where the arrangements—
- (a) contain such provision as may be required by the regulations; and
  - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.
- (2) In this paragraph “reimbursement arrangements” means any arrangements for the purposes of a claim to a repayment of levy which—
- (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
  - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.
- (3) Without prejudice to the generality of sub-paragraph (1), the provision that may be required by regulations under this paragraph to be contained in reimbursement arrangements includes—
- (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
  - (b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;
  - (c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;
  - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.

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- (4) Regulations under this paragraph may impose obligations on such persons as may be specified in the regulations—
- (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of sub-paragraph (3)(b) or (c);
  - (b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d).
- (5) Regulations under this paragraph may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.

*Interest payable by the Commissioners*

- 66 (1) Where, due to an error on the part of the Commissioners, a person—
- (a) has paid to them by way of levy an amount which was not levy due and which they are in consequence liable to repay to him,
  - (b) has failed to claim a repayment of levy to which he was entitled, under any tax credit regulations, in respect of any tax credits, or
  - (c) has suffered delay in receiving payment of an amount due to him from them in connection with levy,
- then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.
- (2) In sub-paragraph (1), the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.
- (3) In that sub-paragraph the amounts referred to in paragraph (c)—
- (a) do not include any amount payable under this paragraph;
  - (b) do not include the amount of any interest for which provision is made by virtue of paragraph 62(3)(f); but
  - (c) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under paragraph 87(3) or 110(3).
- (4) The applicable period, in a case falling within sub-paragraph (1)(a), is the period—
- (a) beginning with the date on which the payment is received by the Commissioners; and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (5) The applicable period, in a case falling within sub-paragraph (1)(b) or (c), is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable; and
  - (b) ending with the date on which they in fact authorise payment of that amount.

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- (6) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control.
- (7) The reference in sub-paragraph (6) to a period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control includes, in particular, any period which is referable to—
- (a) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed;
  - (b) any failure by any person to provide the Commissioners—
    - (i) at or before the time of the making of a claim, or
    - (ii) subsequently in response to a request for information by the Commissioners,with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and
  - (c) the making, as part of or in association with any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled.
- (8) In determining for the purposes of sub-paragraph (7) whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be provided for by regulations, any period which—
- (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
  - (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—
    - (i) that they have received a complete answer to their request for information;
    - (ii) that they have received all that they need in answer to that request; or
    - (iii) that it is unnecessary for them to be provided with any information in answer to that request.
- (9) The Commissioners shall not be liable to pay interest under this paragraph except on the making of a claim for that purpose.
- (10) A claim under this paragraph must be in writing and must be made not more than three years after the end of the applicable period to which it relates.
- (11) References in this paragraph—
- (a) to receiving payment of any amount from the Commissioners, or
  - (b) to the authorisation by the Commissioners of the payment of any amount,
- include references to the discharge by way of set-off (whether in accordance with regulations under paragraph 73 or 74 or otherwise) of the Commissioners' liability to pay that amount.
- (12) Interest under this paragraph shall be payable at the rate applicable under section 197 of the <sup>M13</sup>Finance Act 1996.

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#### Marginal Citations

M13 1966 c. 8.

#### *Assessment for excessive repayment*

- 67 (1) Where—
- (a) any amount has been paid at any time to any person by way of a repayment of levy, and
  - (b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay to that person,
- the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.
- (2) Where—
- (a) any amount has been paid to any person by way of repayment of levy,
  - (b) the repayment is in respect of a tax credit the entitlement to which arose in a case falling within paragraph 62(1)(f) (tax credit where all or part of a debt is bad),
  - (c) the whole or any part of the credit is withdrawn on account of any part of the debt taken as bad falling to be regarded as not having been bad, and
  - (d) the amount paid exceeded the amount which the Commissioners would have been liable to repay to that person had that withdrawal been taken into account,
- the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.
- (3) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of paragraph 65(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (4) Subject to sub-paragraph (5), where—
- (a) an assessment is made on any person under this paragraph in respect of a repayment of levy made in relation to any accounting period, and
  - (b) the Commissioners have power under Part VII of this Schedule to make an assessment on that person to an amount of levy due from that person for that period,
- the assessments may be combined and notified to him as one assessment.
- (5) A notice of a combined assessment under sub-paragraph (4) must separately identify the amount being assessed in respect of repayments of levy.

#### *Assessment for overpayments of interest*

- 68 Where—
- (a) any amount has been paid to any person by way of interest under paragraph 66, but
  - (b) that person was not entitled to that amount under that paragraph,

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the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.

*Assessments under paragraphs 67 and 68*

- 69 (1) An assessment under paragraph 67 or 68 shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.
- (2) Where an amount has been assessed and notified to any person under paragraph 67 or 68, it shall be recoverable as if it were levy due from him.
- (3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

*Interest on amounts assessed*

- 70 (1) Where an assessment is made under paragraph 67 or 68, the whole of the amount assessed shall carry interest, for the period specified in sub-paragraph (2), as follows—
- (a) so much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it (but not any amount assessed under paragraph 67(2)) shall carry penalty interest;
- (b) so much of that amount as does not carry penalty interest under paragraph (a) shall carry interest at the rate applicable under section 197 of the <sup>M14</sup>Finance Act 1996.
- (2) That period is the period which—
- (a) begins with the day after that on which the person is notified of the assessment; and
- (b) ends with the day before that on which payment is made of the amount assessed.
- (3) Interest under this paragraph shall be paid without any deduction of income tax.
- (4) Penalty interest under this paragraph shall be compound interest calculated—
- (a) at the penalty rate, and
- (b) with monthly rests.
- (5) For this purpose the penalty rate is the rate found by—
- (a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of sub-paragraph (1)(b); and
- (b) adding 10 percentage points to that rate.
- (6) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
- (7) Subject to sub-paragraph (8), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (6).

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- (8) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (7), no account shall be taken of any of the following matters, that is to say—
- (a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;
  - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.
- (9) In the case of interest reduced by the Commissioners under sub-paragraph (6) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

#### Marginal Citations

M14 1996 c. 8.

#### *Assessments to interest under paragraph 70*

- 71 (1) Where any person is liable to interest under paragraph 70 the Commissioners may assess the amount due by way of interest and notify it to him accordingly.
- (2) Without prejudice to the power to make assessments under this paragraph for later periods, the interest to which an assessment under this paragraph may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment under this paragraph is made.
- (3) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were levy due from him.
- (4) Sub-paragraph (3) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Where an assessment is made under this paragraph to an amount of interest under paragraph 70—
- (a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
  - (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of the amounts so accruing.
- (6) Where—
- (a) an assessment to interest is made specifying a date for the purposes of sub-paragraph (5)(a), and
  - (b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,
- that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.



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### *Supplementary assessments*

- 72 If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 67, 68 or 71 exceeds the amount which was so assessed, then—
- (a) under the same paragraph as that assessment was made, and
  - (b) on or before the last day on which that assessment could have been made, the Commissioners may make a supplementary assessment of the amount of the excess and notify the person concerned accordingly.

### *Set-off of or against amounts due under this Schedule*

- 73 (1) The Commissioners may by regulations make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of levy; and
  - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of levy or any of the other taxes under their care and management.
- (2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.
- (3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.
- (4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.
- (5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a).
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.
- (7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.
- (8) In this paragraph “tax” includes duty.

### *Set-off of or against other taxes and duties*

- 74 (1) The Commissioners may by regulations make provision in relation to any case where—

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- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management other than levy; and
  - (b) the Commissioners are under a duty, at the same time, to make any repayment of levy to that person or to make any other payment to him of any amount or amounts in respect of levy.
- (2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.
- (3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.
- (4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.
- (5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1) (a).
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.
- (7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.
- (8) In this paragraph “tax” includes duty.

*Restriction on powers to provide for set-off*

- 75 (1) Regulations made under paragraph 73 or 74 shall not require any such amount or amounts as are mentioned in sub-paragraph (1)(b) of that paragraph (“the credit”) to be set against any such amount or amounts as are mentioned in sub-paragraph (1)(a) of that paragraph (“the debit”) in any case where—
- (a) an insolvency procedure has been applied to the person entitled to the credit;
  - (b) the credit became due after that procedure was so applied; and
  - (c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.
- (2) For the purposes of this paragraph, an insolvency procedure is applied to a person if—

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- (a) a bankruptcy order, winding-up order or administration order is made in relation to that person or an award of sequestration is made on that person's estate;
  - (b) that person is put into administrative receivership;
  - (c) that person passes a resolution for voluntary winding up;
  - (d) any voluntary arrangement approved in accordance with—
    - (i) Part I or VIII of the <sup>M15</sup>Insolvency Act 1986, or
    - (ii) Part II or Chapter II of Part VIII of the <sup>M16</sup>Insolvency (Northern Ireland) Order 1989,comes into force in relation to that person;
  - (e) a deed of arrangement registered in accordance with—
    - (i) the <sup>M17</sup>Deeds of Arrangement Act 1914, or
    - (ii) Chapter I of Part VIII of that Order,takes effect in relation to that person;
  - (f) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;
  - (g) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;
  - (h) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or
  - (i) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the <sup>M18</sup>Bankruptcy (Scotland) Act 1985).
- (3) In this paragraph references, in relation to any person, to the application of an insolvency procedure to that person shall not include—
- (a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangement or deed as is mentioned in paragraph (d), (e) or (i) of sub-paragraph (2) is in force in relation to that person;
  - (b) the making of a winding-up order at any of the following times, that is to say—
    - (i) immediately upon the discharge of an administration order made in relation to that person;
    - (ii) when that person is being wound up voluntarily;
    - (iii) when that person is in administrative receivership;or
  - (c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.
- (4) For the purposes of this paragraph a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person.
- (5) In this paragraph—

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“administration order” means an administration order under section 8 of the <sup>M19</sup>Insolvency Act 1986 or Article 21 of the <sup>M20</sup> Insolvency (Northern Ireland) Order 1989;

“administrative receiver” means an administrative receiver within the meaning of section 251 of that Act or Article 5(1) of that Order.

#### Marginal Citations

- M15** 1986 c. 45.  
**M16** S.I. 1989/2405 (N.I. 19).  
**M17** 1914 c. 47.  
**M18** 1985 c. 66.  
**M19** 1986 c. 45.  
**M20** S.I. 1989/2405 (N.I. 19).

#### *Part VI: supplemental provisions*

- 76 (1) Any notification of an assessment under any provision of this Part of this Schedule to a person’s representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.
- (2) In this paragraph “representative”, in relation to any person, means—
- any of that person’s personal representatives;
  - that person’s trustee in bankruptcy or liquidator;
  - any person holding office as a receiver in relation to that person or any of his property;
  - that person’s tax representative or any other person for the time being acting in a representative capacity in relation to that person.
- (3) In this paragraph “trustee in bankruptcy” includes, as respects Scotland—
- an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and
  - a trustee acting under a trust deed (within the meaning of that Act).
- (4) The powers conferred by paragraphs 73 and 74 are without prejudice to any power of the Commissioners to provide by tax credit regulations for any amount to be set against another.

## PART VII

### RECOVERY AND INTEREST

#### *Recovery of levy as debt due*

- 77 Levy shall be recoverable as a debt due to the Crown.

#### *Assessments of amounts of levy due*

- 78 (1) Where it appears to the Commissioners—

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- (a) that any period is an accounting period by reference to which a person is liable to account for levy,
- (b) that any levy for which that person is liable to account by reference to that period has become due, and
- (c) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of levy due from that person for that period to the best of their judgement and notify that amount to that person.

- (2) The defaults falling within this sub-paragraph are—
  - (a) any failure to make a return required to be made by any provision made by or under this Schedule;
  - (b) any failure to keep any documents necessary to verify returns required to be made under any such provision;
  - (c) any failure to afford the facilities necessary to verify returns required to be made under any such provision;
  - (d) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return;
  - (e) any failure to comply with a requirement imposed by or under Part V of this Schedule (registration).
- (3) Where it appears to the Commissioners that a default falling within sub-paragraph (2) is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative of another person, sub-paragraph (1) shall apply as if the reference to the amount of levy due included a reference to any levy due from that other person.
- (4) In a case where—
  - (a) the Commissioners have made an assessment for any accounting period as a result of any person's failure to make a return for that period,
  - (b) the levy assessed has been paid but no proper return has been made for that period,
  - (c) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it necessary to make another assessment under this paragraph in relation to the later period, and
  - (d) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period,they may, in the assessment in relation to the later period, specify an amount of levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period.
- (5) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable on the basis that it is an amount of levy due from him.
- (6) Sub-paragraph (5) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

#### *Supplementary assessments*

- 79 (1) If, where an assessment has been notified to any person under paragraph 78 or this paragraph, it appears to the Commissioners that the amount which ought to have been

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assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

- (2) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable on the basis that it is an amount of levy due from him.
- (3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

#### *Time limits for assessments*

- 80 (1) An assessment under paragraph 78 or 79 of an amount of levy due for any accounting period—
  - (a) shall not be made more than two years after the end of the accounting period unless it is made within the period mentioned in sub-paragraph (2); and
  - (b) subject to sub-paragraph (3), shall not in any event be made more than three years after the end of that accounting period.
- (2) The period referred to in sub-paragraph (1)(a) is the period of one year after evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge.
- (3) Subject to sub-paragraph (4), where levy has been lost—
  - (a) as a result of any conduct for which a person has been convicted of an offence involving fraud,
  - (b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or
  - (c) as a result of conduct falling within paragraph 98(1) (evasion),
 that levy may be assessed under paragraph 78 or 79 as if, in sub-paragraph (1)(b) above, for "three years" there were substituted "twenty years".
- (4) Where, after a person's death, the Commissioners propose to assess an amount of levy as due by reason of some conduct of the deceased—
  - (a) the assessment shall not be made more than three years after the death; and
  - (b) if the circumstances are as set out in sub-paragraph (3)—
    - (i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but
    - (ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.
- (5) Nothing in this paragraph shall prejudice the powers of the Commissioners under paragraph 78(4).

#### *Ordinary interest on overdue levy paid before assessment*

- 81 (1) Where—
  - (a) the circumstances are such that an assessment could have been made under paragraph 78 or 79 of an amount of levy due from any person, but
  - (b) before such an assessment was made and notified to that person that amount was paid (so that no such assessment was necessary),

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the whole of the amount paid shall carry interest for the period specified in sub-paragraph (2).

- (2) That period is the period which—
- (a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period to which the amount paid relates; and
  - (b) ends with the day before that on which the amount is paid.
- (3) Interest under this paragraph shall be payable at the rate applicable under section 197 of the <sup>M21</sup>Finance Act 1996.

**Marginal Citations**

**M21** 1966 c. 8.

*Penalty interest on unpaid levy*

- 82 (1) Where—
- (a) a person makes a return for the purposes of any regulations made under paragraph 41 (whether or not at the time required by the regulations), and
  - (b) the return shows that an amount of levy is due from him for the accounting period for which the return is made,
- that amount shall carry penalty interest for the period specified in sub-paragraph (2).
- (2) That period is the period which—
- (a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and
  - (b) ends with the day before that on which the amount shown in the return is paid.

*Penalty interest on levy where no return made*

- 83 (1) Where—
- (a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him, and
  - (b) the assessment is made at a time after the time by which a return is required by regulations under paragraph 41 to be made by that person for that accounting period and before any such return has been made,
- that amount shall carry penalty interest for the period specified in sub-paragraph (2).
- (2) That period is the period which—
- (a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and
  - (b) ends with the day before that on which the assessed amount is paid.
- (3) Where the person, after the assessment is made, makes for the purposes of any regulations under paragraph 41 a return for the accounting period in question, the

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assessed amount shall not carry penalty interest under this paragraph to the extent that that amount is shown in the return as an amount of levy due from him for that accounting period (and, accordingly, carries penalty interest under paragraph 82).

*Ordinary and penalty interest on under-declared levy*

- 84 (1) Subject to sub-paragraph (4), where—
- (a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,
  - (b) the assessment is made after a return for the purposes of any regulations under paragraph 41 has been made by that person for that accounting period, and
  - (c) the assessment is made on the basis that the amount (“the additional amount”) is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period,
- the additional amount shall carry interest for the period specified in sub-paragraph (2).
- (2) That period is the period which—
- (a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and
  - (b) ends with the day before the day on which the additional amount is paid.
- (3) Interest under this paragraph—
- (a) in respect of so much of the period specified in sub-paragraph (2) as falls before the day on which the assessment is notified to the person in question, shall be payable at the rate applicable under section 197 of the <sup>M22</sup>Finance Act 1996 for the purposes of paragraph 81(3); and
  - (b) in respect of the remainder (if any) of that period, shall be penalty interest.
- (4) Where—
- (a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,
  - (b) they also specify a date for the purposes of this sub-paragraph, and
  - (c) the amount assessed is paid on or before that date,
- the only interest carried by that amount under this paragraph shall be interest, at the rate given by sub-paragraph (3)(a), for the period before the day on which the assessment is notified.

**Marginal Citations**

M22 1996 c. 8.

*Penalty interest on unpaid ordinary interest*

- 85 (1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 88 of an amount of interest payable at the rate given by paragraph 81(3), that amount shall carry penalty interest for the period which—



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- (a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and
  - (b) ends with the day before the day on which the assessed interest is paid.
- (2) Where—
- (a) the Commissioners make an assessment under paragraph 88 of an amount of interest due from any person,
  - (b) they also specify a date for the purposes of this sub-paragraph, and
  - (c) the amount of interest assessed is paid on or before that date,
- the amount paid before that date shall not carry penalty interest under this paragraph.

#### *Penalty interest*

- 86 (1) Penalty interest under any of paragraphs 82 to 85 shall be compound interest calculated—
- (a) at the penalty rate, and
  - (b) with monthly rests.
- (2) For this purpose the penalty rate is the rate found by—
- (a) taking the rate applicable under section 197 of the <sup>M23</sup>Finance Act 1996 for the purposes of paragraph 81(3); and
  - (b) adding 10 percentage points to that rate.
- (3) Where a person is liable under any of paragraphs 82 to 85 to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
- (4) Subject to sub-paragraph (5), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (3).
- (5) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (4), no account shall be taken of any of the following matters, that is to say—
- (a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;
  - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.
- (6) In the case of interest reduced by the Commissioners under sub-paragraph (3) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

#### **Marginal Citations**

**M23** 1996 c. 8.

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*Supplemental provisions about interest*

- 87 (1) Interest under any of paragraphs 81 to 85 shall be paid without any deduction of income tax.
- (2) Sub-paragraph (3) applies where—
- (a) an amount carries interest under any of paragraphs 81 to 85 (or would do so apart from that sub-paragraph); and
  - (b) all or part of the amount turns out not to be due.
- (3) In such a case—
- (a) the amount or part that turns out not to be due shall not carry interest under the applicable paragraph and shall be treated as never having done so; and
  - (b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

*Assessments to interest*

- 88 (1) Where a person is liable for interest under any of paragraphs 81 to 85, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.
- (2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.
- (3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.
- (4) Sub-paragraph (3)—
- (a) shall not apply so as to require any interest to be payable on interest except—
    - (i) in accordance with paragraph 85, or
    - (ii) in so far as it falls to be compounded in accordance with paragraph 86;
 and
  - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Paragraph 80 shall apply in relation to assessments under this paragraph as if any assessment to interest were an assessment under paragraph 78 to levy due for the period which is the relevant accounting period in relation to that interest.
- (6) Subject to sub-paragraph (7), where a person—
- (a) is assessed under this paragraph to an amount due by way of any interest, and
  - (b) is also assessed under paragraph 78 or 79 for the accounting period which is the relevant accounting period in relation to that interest,
- the assessments may be combined and notified to him as one assessment.
- (7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.
- (8) The relevant accounting period for the purposes of this paragraph is—

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- (a) in the case of interest on levy due for any accounting period, that accounting period; and
  - (b) in the case of interest on interest (whether under paragraph 85 or by virtue of any compounding under paragraph 86), the period which is the relevant accounting period for the interest on which the interest is payable.
- (9) In a case where—
- (a) the amount of any interest falls to be calculated by reference to levy which was not paid at the time when it should have been, and
  - (b) that levy cannot be readily attributed to any one or more accounting periods, that levy shall be treated for the purposes of interest on any of that levy as levy due for such period or periods as the Commissioners may determine to the best of their judgement and notify to the person liable.

#### *Further assessments to penalty interest*

- 89 (1) Where an assessment is made under paragraph 88 to an amount of penalty interest under any of paragraphs 82 to 85—
- (a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
  - (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 88 in respect of the amounts so accruing.
- (2) Where—
- (a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and
  - (b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,
- that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

#### *Walking possession agreements*

- 90 (1) This paragraph applies where—
- (a) in accordance with regulations under section 51 of the <sup>M24</sup>Finance Act 1997 (enforcement by distress), a distress is authorised to be levied on the goods and chattels of a person (“the person in default”) who has refused or neglected to pay an amount of levy due from him or an amount recoverable from him as if it were levy; and
  - (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) For the purposes of this paragraph a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and

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- (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) Subject to sub-paragraph (4), if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one half of the levy or other amount referred to in sub-paragraph (1)(a).
- (4) The person in default shall not be liable to a penalty under sub-paragraph (3) if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.
- (5) This paragraph does not extend to Scotland.

**Marginal Citations**

M24 1997 c. 16.

*Interpretation etc. of Part VII*

- 91 (1) In this Part of this Schedule “penalty interest” shall be construed in accordance with paragraph 86.
- (2) Any notification of an assessment under any provision of this Part of this Schedule to a person’s representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.
- (3) In this Part of this Schedule “representative”, in relation to any person, means—
- (a) any of that person’s personal representatives;
  - (b) that person’s trustee in bankruptcy or liquidator;
  - (c) any person holding office as a receiver in relation to that person or any of his property;
  - (d) that person’s tax representative or any other person for the time being acting in a representative capacity in relation to that person.
- (4) In this paragraph “trustee in bankruptcy” includes, as respects Scotland—
- (a) an interim or permanent trustee (within the meaning of the <sup>M25</sup>Bankruptcy (Scotland) Act 1985); and
  - (b) a trustee acting under a trust deed (within the meaning of that Act).

**Marginal Citations**

M25 1985 c. 66.

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## PART VIII

### EVASION, MISDECLARATION AND NEGLECT

#### *Criminal offences: Evasion*

- 92 (1) A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to—
- (a) the fraudulent evasion by that person of any levy with which he is charged; or
  - (b) the fraudulent evasion by any other person of any levy with which that other person is charged.
- (2) The references in sub-paragraph (1) to the evasion of levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of levy.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).
- (5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
  - (b) the amount of any repayment of levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of levy to which he was, or would have been, entitled.

#### *Criminal offences: Misstatements*

- 93 (1) A person is guilty of an offence if, with the requisite intent and for purposes connected with the levy—
- (a) he produces or provides, or causes to be produced or provided, any document which is false in a material particular, or
  - (b) he otherwise makes use of such a document;
- and in this sub-paragraph “the requisite intent” means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document.
- (2) A person is guilty of an offence if, in providing any information under any provision made by or under this Schedule—

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- (a) he makes a statement which he knows to be false in a material particular; or
  - (b) he recklessly makes a statement which is false in a material particular.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where—
- (a) the document referred to in sub-paragraph (1) is a return required under any provision made by or under this Schedule, or
  - (b) the information referred to in sub-paragraph (2) is contained in or otherwise relevant to such a return,
- the amount of the penalty on summary conviction shall be whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts (if any) by which the return understates any person’s liability to levy.
- (5) In sub-paragraph (4) the reference to the amount by which any person’s liability to levy is understated shall be taken to be equal to the sum of—
- (a) the amount (if any) by which his gross liability was understated; and
  - (b) the amount (if any) by which any entitlements of his to tax credits and repayments of levy were overstated.
- (6) In sub-paragraph (5) “gross liability” means liability to levy before any deduction is made in respect of any entitlement to any tax credit or repayments of levy.

*Criminal offences: Conduct involving evasions or misstatements*

- 94 (1) A person is guilty of an offence under this paragraph if his conduct during any particular period must have involved the commission by him of one or more offences under the preceding provisions of this Part of this Schedule.
- (2) For the purposes of any proceedings for an offence under this paragraph it shall be immaterial whether the particulars of the offence or offences that must have been committed are known.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).
- (5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded by any conduct shall be taken to include—

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- (a) the amount of any tax credit, and
- (b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

- (6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

*Criminal offences: Preparations for evasion*

- 95 (1) Where a person—
- (a) becomes a party to any agreement under or by means of which a supply of a taxable commodity is or is to be made, or
  - (b) makes arrangements for any other person to become a party to such an agreement,
- he is guilty of an offence if he does so in the belief that levy chargeable on the supply will be evaded.
- (2) Subject to sub-paragraph (3), a person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.
- (3) In the case of any offence under this paragraph, where level 5 on the standard scale is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded in respect of the supply in question, the penalty shall be the amount equal to three times that sum (instead of level 5 on the standard scale).
- (4) For the purposes of sub-paragraph (3) the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
  - (b) the amount of any repayment of levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (5) In determining for the purposes of sub-paragraph (3) how much levy (in addition to any amount falling within sub-paragraph (4)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

*Offences under paragraphs 92 to 95: procedural matters*

- 96 Sections 145 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under paragraphs 92 to 95 as they apply in relation to offences and penalties under the customs and excise Acts.

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*Arrest for offences under paragraphs 92 to 94*

- 97 (1) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
- (2) In this paragraph—
- “authorised person” means any person acting under the authority of the Commissioners; and
- “a fraud offence” means an offence under any of paragraphs 92 to 94.

*Civil penalties: Evasion*

- 98 (1) Subject to sub-paragraph (5), where—
- (a) any person engages in any conduct for the purpose of evading levy, and
- (b) that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
- that person shall be liable to a penalty.
- (2) The amount of the penalty shall be—
- (a) equal to the amount of levy evaded, or (as the case may be) intended to be evaded, by the person’s conduct if at the time of engaging in that conduct he was or was required to be registered for the purposes of the levy;
- (b) equal to twice that amount if at that time the person neither was nor was required to be registered for those purposes.
- (3) The references in sub-paragraph (1) to evading levy include references to obtaining, in circumstances where there is no entitlement to it, either—
- (a) a tax credit; or
- (b) a repayment of levy.
- (4) For the purposes of sub-paragraph (2) the amount of levy that was or was intended to be evaded by any conduct shall be taken to include—
- (a) the amount of any tax credit, and
- (b) the amount of any repayment of levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (5) In determining for the purposes of sub-paragraph (2) how much levy (in addition to any amount falling within sub-paragraph (4)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.
- (6) Where, by reason of conduct falling within sub-paragraph (1), a person is convicted of an offence (whether under this Act or otherwise) that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

*Liability of directors etc. for penalties under paragraph 98*

- 99 (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under paragraph 98, and



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- (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “named officer”),  
the Commissioners may serve a notice under this paragraph on the body corporate and on the named officer.
- (2) A notice under this paragraph shall state—
- (a) the amount of the penalty referred to in sub-paragraph (1)(a) (“the basic penalty”), and
- (b) that the Commissioners propose, in accordance with this paragraph, to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice.
- (3) Where a notice is served under this paragraph, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under paragraph 98 to a penalty which corresponds to that portion.
- (4) Where a notice is served under this paragraph—
- (a) the amount which may be assessed under Part IX of this Schedule as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer; and
- (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.
- (5) Subject to the following provisions of this paragraph, the giving of a notice under this paragraph as such shall not be a decision which may be reviewed under paragraph 121.
- (6) Where a body corporate is assessed as mentioned in sub-paragraph (4)(a), the decisions of the Commissioners that may be reviewed in accordance with paragraph 121 shall include their decision—
- (a) as to the liability of the body corporate to a penalty, and
- (b) as to the amount of the basic penalty that is specified in the assessment;  
and paragraphs 122 and 123 shall apply accordingly.
- (7) Where an assessment is made on a named officer by virtue of this paragraph, the decisions which may be reviewed under paragraph 121 at the request of the named officer shall include—
- (a) the Commissioners’ decisions in the case of the body corporate as to the matters mentioned in sub-paragraph (6)(a) and (b);
- (b) their decision that the conduct of the body corporate referred to in sub-paragraph (1)(b) is, in whole or in part, attributable to the dishonesty of the named officer; and
- (c) their decision as to the portion of the penalty which the Commissioners propose to recover from him;  
and paragraphs 122 and 123 shall apply accordingly.
- (8) In this paragraph a “managing officer”, in relation to a body corporate, means—
- (a) any manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity or as a director.

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- (9) Where the affairs of a body corporate are managed by its members, this paragraph shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

*Civil penalties: Misdeclaration or neglect*

- 100 (1) Subject to sub-paragraphs (3) to (5), where for an accounting period—
- (a) a return is made which understates a person's liability to levy or overstates his entitlement to any tax credit or repayment of levy, or
  - (b) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,
- the person concerned shall be liable to a penalty equal to 5 per cent. of the amount of the understatement of liability or (as the case may be) overstatement of entitlement.
- (2) Where—
- (a) a return for an accounting period—
    - (i) overstates or understates to any extent a person's liability to levy, or
    - (ii) understates or overstates to any extent his entitlement to any tax credits or repayments of levy,

and
  - (b) that return is corrected—
    - (i) in such circumstances as may be prescribed, and
    - (ii) in accordance with such conditions as may be prescribed,

by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period,

it shall be assumed for the purposes of this paragraph that the statement made by each such return is a correct statement for the accounting period to which the return relates.
- (3) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned—
- (a) at a time when he has no reason to believe that enquiries are being made by the Commissioners into his affairs, so far as they relate to the levy; and
  - (b) in such form and manner as may be prescribed by regulations made by the Commissioners or specified by them in accordance with any such regulations.
- (4) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his conduct.
- (5) Where, by reason of conduct falling within sub-paragraph (1)—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 98,
- that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

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*Civil penalties: Incorrect notifications etc.*

- 101 (1) Where—
- (a) a person gives a notification for the purposes of paragraph 11 in relation to any supply (or supplies) of a taxable commodity (or taxable commodities), and
  - (b) the notification is incorrect,
- the person shall be liable to a penalty.
- (2) Where—
- (a) a person gives, in relation to any supply (or supplies) of a taxable commodity (or taxable commodities) being made to him, to the supplier a certificate that the supply (or supplies) is (or are) to any extent—
    - (i) for domestic or charity use,
    - (ii) exempt under any of paragraphs 12, 13, 14, 18 and 21, or
    - (iii) a half-rate supply (or half-rate supplies), and
  - (b) the certificate is incorrect,
- the person shall be liable to a penalty.
- (3) The amount of the penalty to which a person is liable under sub-paragraph (1) or (2) shall be equal to 105 per cent. of the difference between—
- (a) the amount of levy (which may be nil) that would have been chargeable on the supply (or supplies) if the notification or certificate had been correct, and
  - (b) the amount of levy actually chargeable.
- (4) The giving of a notification or certificate shall not give rise to a penalty under this paragraph if the person who gave it satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his having given it.
- (5) Where by reason of giving a notification or certificate—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 98,
- that person shall not by reason of the giving of the notification or certificate be liable also to a penalty under this paragraph.

*Interpretation of Part VIII*

- 102 (1) References in this Part of this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations.
- (2) References in this Part of this Schedule to obtaining a repayment of levy are references to obtaining either—
- (a) the payment or repayment of any amount, or
  - (b) the acknowledgement of a right to receive any amount,
- on the basis that that amount is the amount of a repayment of levy to which there is an entitlement.

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## PART IX

### CIVIL PENALTIES

#### *Preliminary*

- 103 (1) In this Part of this Schedule “civil penalty” means any penalty liability to which—
- (a) is imposed by or under this Schedule, and
  - (b) arises otherwise than in consequence of a person’s conviction for a criminal offence.
- (2) In this Part of this Schedule—
- (a) references to a person’s being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of paragraph 99; and
  - (b) references, in relation to a person from whom the whole or any part of a civil penalty is so recoverable, to the penalty to which he is liable are references to so much of the penalty as is recoverable from him.
- (3) Any notification of an assessment under any provision of this Part of this Schedule to a person’s representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.
- (4) In this paragraph “representative”, in relation to any person, means—
- (a) any of that person’s personal representatives;
  - (b) that person’s trustee in bankruptcy or liquidator;
  - (c) any person holding office as a receiver in relation to that person or any of his property;
  - (d) that person’s tax representative or any other person for the time being acting in a representative capacity in relation to that person.
- (5) In this paragraph “trustee in bankruptcy” includes, as respects Scotland—
- (a) an interim or permanent trustee (within the meaning of the <sup>M26</sup>Bankruptcy (Scotland) Act 1985); and
  - (b) a trustee acting under a trust deed (within the meaning of that Act).

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#### **Marginal Citations**

**M26** 1985 c. 66.

#### *Reduction of penalties*

- 104 (1) Where a person is liable to a civil penalty—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; but
  - (b) on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners’ reduction.

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- (2) In determining whether a civil penalty should be, or should have been, reduced under sub-paragraph (1), no account shall be taken of any of the following matters, that is to say—
- (a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;
  - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

*Matters not amounting to reasonable excuse*

- 105 For the purposes of any provision made by or under this Schedule under which liability to a civil penalty does not arise in respect of conduct for which there is shown to be a reasonable excuse—
- (a) an insufficiency of funds available for paying any amount is not a reasonable excuse; and
  - (b) where reliance has been placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse.

*Assessments to penalties etc.*

- 106 (1) Where a person is liable to a civil penalty, the Commissioners may assess the amount due by way of penalty and notify it to him accordingly.
- (2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.
- (3) The fact that any conduct giving rise to a civil penalty may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (4) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.
- (5) Sub-paragraph (4)—
- (a) shall not apply so as to require any interest to be payable on a penalty otherwise than in accordance with this Part of this Schedule; and
  - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (6) Subject to sub-paragraph (7), where a person—
- (a) is assessed under this paragraph to an amount due by way of a penalty, and
  - (b) is also assessed under any one or more provisions of Part VII of this Schedule for an accounting period to which the conduct attracting the penalty is referable,
- the assessments may be combined and notified to him as one assessment.

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- (7) A notice of a combined assessment under sub-paragraph (6) must separately identify the penalty being assessed.
- (8) The power to make an assessment under this paragraph is subject to paragraph 99(4).

*Further assessments to daily penalties*

- 107 (1) This paragraph applies where an assessment is made under paragraph 106 to an amount of a civil penalty to which any person is liable—
- (a) under paragraph 124(3) (failure to provide information); or
  - (b) under paragraph 127(4) (failure to produce a document).
- (2) The notice of assessment shall specify a time, not later than the end of the day of the giving of the notice of assessment, to which the amount of any daily penalty is calculated.
- (3) For the purposes of sub-paragraph (2) “daily penalty” means—
- (a) in a case within sub-paragraph (1)(a), a penalty imposed by virtue of paragraph 124(3)(b); and
  - (b) in a case within sub-paragraph (1)(b), a penalty imposed by virtue of paragraph 127(4)(b).
- (4) If further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made under paragraph 106 in respect of the amounts so accruing.
- (5) Where—
- (a) an assessment to a civil penalty is made specifying a date for the purposes of sub-paragraph (2), and
  - (b) the failure in question is remedied within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the penalty,
- the failure shall be deemed for the purposes of any further liability to civil penalties to have been remedied on the specified date.

*Time limits on penalty assessments*

- 108 (1) Subject to sub-paragraphs (2) and (3), an assessment under paragraph 106 to a penalty shall not be made more than three years after the conduct to which the penalty relates.
- (2) Subject to sub-paragraph (3), if levy has been lost—
- (a) as a result of any conduct for which a person has been convicted of an offence involving fraud,
  - (b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or
  - (c) as a result of conduct falling within paragraph 98(1) (evasion),
- an assessment may be made for any civil penalty relating to that conduct as if, in sub-paragraph (1), for “three years” there were substituted “twenty years”.
- (3) Where, after a person’s death, the Commissioners propose to assess an amount of a civil penalty due by reason of some conduct of the deceased—

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- (a) the assessment shall not be made more than three years after the death; and
- (b) if the circumstances are as set out in sub-paragraph (2)—
  - (i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but
  - (ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

*Penalty interest on unpaid penalties*

- 109 (1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 106 of any civil penalty to which a person is liable the amount of that penalty shall carry penalty interest for the period which—
- (a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and
  - (b) ends with the day before the day on which the assessed penalty is paid.
- (2) Where—
- (a) the Commissioners make an assessment under paragraph 106 of an amount of any civil penalty to which any person is liable,
  - (b) they also specify a date for the purposes of this sub-paragraph, and
  - (c) the amount of the penalty assessed is paid on or before that date,
- the amount paid before that date shall not carry penalty interest under this paragraph.
- (3) Penalty interest under this paragraph shall be compound interest calculated—
- (a) at the penalty rate, and
  - (b) with monthly rests.
- (4) For this purpose the penalty rate is the rate found by—
- (a) taking the rate applicable under section 197 of the <sup>M27</sup>Finance Act 1996 for the purposes of paragraph 81(3); and
  - (b) adding 10 percentage points to that rate.
- (5) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
- (6) Subject to sub-paragraph (7), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (5).
- (7) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (6), no account shall be taken of any of the following matters, that is to say—
- (a) the insufficiency of the funds available to any person for paying any levy or penalty due or for paying the amount of the interest;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;
  - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

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- (8) In the case of interest reduced by the Commissioners under sub-paragraph (5), an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

#### Marginal Citations

M27 1996 c. 8.

#### *Supplemental provisions about interest*

- 110 (1) Interest under paragraph 109 shall be paid without any deduction of income tax.
- (2) Sub-paragraph (3) applies where—
- (a) an amount carries interest under paragraph 109 (or would do so apart from that sub-paragraph); and
  - (b) all or part of the amount turns out not to be due.
- (3) In such a case—
- (a) the amount or part that turns out not to be due shall not carry interest under paragraph 109 and shall be treated as never having done so; and
  - (b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

#### *Assessments to penalty interest on unpaid penalties*

- 111 (1) Where a person is liable for interest under paragraph 109, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.
- (2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.
- (3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.
- (4) Sub-paragraph (3)—
- (a) shall not apply so as to require any interest to be payable on interest (except in so far as it falls to be compounded in accordance with paragraph 109(3)); and
  - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Paragraph 108 shall apply in relation to assessments under this paragraph as if any assessment to interest on a penalty were an assessment under paragraph 106 to the penalty in question.
- (6) Subject to sub-paragraph (7), where a person—
- (a) is assessed under this paragraph to an amount due by way of any interest on a penalty, and



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- (b) is also assessed under any one or more provisions of Part VII of this Schedule for the accounting period to which the conduct attracting the penalty is referable,  
the assessments may be combined and notified to him as one assessment.
- (7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.

*Further assessments to interest on penalties*

- 112 (1) Where an assessment is made under paragraph 111 to an amount of penalty interest under paragraph 109—
- (a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
- (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 111 in respect of the amounts so accruing.
- (2) Where—
- (a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and
- (b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,
- that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

*Up-rating of amounts of penalties*

- 113 (1) If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty provided for by this Schedule was fixed, they may by regulations substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to them to be justified by the change.
- (2) In sub-paragraph (1) the reference to the time when the amount of a civil penalty was fixed is a reference—
- (a) in the case of a penalty which has not previously been modified under that sub-paragraph, to the time of the passing of this Act; and
- (b) in any other case, to the time of the making of the regulations under that sub-paragraph that made the most recent modification of the amount of that penalty.
- (3) Regulations under sub-paragraph (1) shall not apply to the penalty for any conduct before the coming into force of the regulations.

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## PART X

### NON-RESIDENTS, GROUPS AND OTHER SPECIAL CASES

#### *Non-resident taxpayers: appointment of tax representatives*

- 114 (1) The Commissioners may by regulations make provision for securing that every non-resident taxpayer has a person resident in the United Kingdom to act as his tax representative for the purposes of the levy.
- (2) Regulations under this paragraph may, in particular, contain any or all of the following—
- (a) provision requiring notification to be given to the Commissioners where a person becomes a non-resident taxpayer;
  - (b) provision requiring the appointment of tax representatives by non-resident taxpayers;
  - (c) provision for the appointment of a person as a tax representative to take effect only where the person appointed is approved by the Commissioners;
  - (d) provision authorising the Commissioners to give a direction requiring the replacement of a tax representative;
  - (e) provision authorising the Commissioners to give a direction requiring a person specified in the direction to be treated as the appointed tax representative of a non-resident taxpayer so specified;
  - (f) provision about the circumstances in which a person ceases to be a tax representative and about the withdrawal by the Commissioners of their approval of a tax representative;
  - (g) provision enabling a tax representative to act on behalf of the person for whom he is the tax representative through an agent of the representative;
  - (h) provision for the purposes of any provision made by virtue of paragraphs (a) to (g) regulating the procedure to be followed in any case and imposing requirements as to the information and other particulars to be provided to the Commissioners;
  - (i) provision as to the time at which things done under or for the purposes of the regulations are to take effect.
- (3) Subject to sub-paragraph (4), a person who—
- (a) becomes subject, in accordance with any regulations under this paragraph, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but
  - (b) fails (with or without making the appointment) to make the request as required by the regulations,
- shall be liable to a penalty of £10,000.
- (4) A failure such as is mentioned in sub-paragraph (3) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

#### *Effect of appointment of tax representatives*

- 115 (1) The tax representative of a non-resident taxpayer shall be entitled to act on the non-resident taxpayer's behalf for the purposes of any provision made by or under this Schedule.

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- (2) The tax representative of a non-resident taxpayer shall be under a duty, except to such extent as the Commissioners by regulations otherwise provide, to secure the non-resident taxpayer's compliance with, and discharge of, the obligations and liabilities to which the non-resident taxpayer is subject by virtue of any provision made by or under this Schedule (including obligations and liabilities arising or incurred before he became the non-resident taxpayer's tax representative).
- (3) A person who is or has been the tax representative of a non-resident taxpayer shall be personally liable—
- (a) in respect of any failure while he is or was the non-resident taxpayer's tax representative to secure compliance with, or the discharge of, any obligation or liability to which sub-paragraph (2) applies, and
  - (b) in respect of anything done in the course of, or for purposes connected with, acting on the non-resident taxpayer's behalf,
- as if the obligations and liabilities to which sub-paragraph (2) applies were imposed jointly and severally on the tax representative and the non-resident taxpayer.
- (4) A tax representative shall not be liable by virtue of this paragraph to be registered for the purposes of the levy; but the Commissioners may by regulations—
- (a) require the names of tax representatives to be registered against the names of the non-resident taxpayers of whom they are the representatives;
  - (b) make provision for the deletion of the names so registered of persons who cease to be tax representatives.
- (5) A tax representative shall not by virtue of this paragraph be guilty of any offence except in so far as—
- (a) he has consented to, or connived in, the commission of the offence by the non-resident taxpayer;
  - (b) the commission of the offence by the non-resident taxpayer is attributable to any neglect on the part of the tax representative; or
  - (c) the offence consists in a contravention by the tax representative of an obligation which, by virtue of this paragraph, is imposed both on the tax representative and on the non-resident taxpayer.

*Groups of companies etc.*

- 116 (1) The Commissioners may make provision by regulations for two or more bodies corporate to be treated as members of a group for the purposes of the Schedule.
- (2) Regulations under sub-paragraph (1) may, in particular, make provision for or about—
- (a) eligibility for group treatment;
  - (b) representative members of groups;
  - (c) applications for, or the variation or ending of, group treatment;
  - (d) the decisions to be made on applications;
  - (e) the variation or ending of group treatment by notice given by the Commissioners otherwise than on an application;
  - (f) treating a member of a group as charged with levy that would otherwise be levy with which another member of the group would be charged;
  - (g) the members of a group liable for levy, or amounts recoverable as levy, due from a member of a group.

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- (3) The provision mentioned in sub-paragraph (2)(c) includes provision—
- (a) about the time within which applications are to be made,
  - (b) for authorising the Commissioners to extend such time, and
  - (c) for applications that seek group treatment, or its variation or ending, with effect from a time before they are made.
- (4) The provision mentioned in sub-paragraph (2)(e) includes provision for a notice to have effect from a time before it is given.
- (5) Regulations under sub-paragraph (1) may make provision for imposing requirements on a body corporate to notify the Commissioners of prescribed matters relating to group treatment.
- (6) A body corporate which fails to comply with any such requirement imposed by such regulations shall be liable to a penalty of £250.

*Partnerships and other unincorporated bodies*

- 117 (1) The Commissioners may by regulations make provision for determining by what persons anything required to be done under this Schedule is to be done where, apart from those regulations, that requirement would fall on—
- (a) persons carrying on business in partnership; or
  - (b) persons carrying on business together as an unincorporated body;
- but any regulations under this sub-paragraph must be construed subject to the following provisions of this paragraph.
- (2) In determining for the purposes of this Schedule who at any time is the person accountable for any levy in a case where, apart from this sub-paragraph, the persons accountable are persons carrying on any business—
- (a) in partnership, or
  - (b) as an unincorporated body,
- the firm or body shall be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members.
- (3) Without prejudice to section 36 of the <sup>M28</sup>Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), where—
- (a) persons have been carrying on in partnership any business in the course or furtherance of which there has been done any thing that resulted in the firm becoming liable to account for any levy, and
  - (b) a person ceases to be a member of the firm,
- that person shall be regarded for the purposes of this Schedule (including sub-paragraph (7) below) as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners.
- (4) Where a person ceases to be a member of a firm during an accounting period (or is treated as so ceasing by virtue of sub-paragraph (3)) any notice, whether of assessment or otherwise, which—
- (a) is served on the firm under or for the purposes of any provision made by or under this Schedule, and

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- (b) relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm,  
shall be treated as served also on him.
- (5) Without prejudice to section 16 of the <sup>M29</sup>Partnership Act 1890 (notice to acting partner to be notice to the firm), any notice, whether of assessment or otherwise, which—
- (a) is addressed to a firm by the name in which it is registered, and
- (b) is served in accordance with this Schedule,  
shall be treated for the purposes of this Schedule as served on the firm and, accordingly, where sub-paragraph (4) applies, as served also on the former partner.
- (6) Subject to sub-paragraph (7), nothing in this paragraph shall affect the extent to which, under section 9 of the Partnership Act 1890 (liability of partners for debts of the firm), a partner is liable for levy owed by the firm.
- (7) Where a person is a partner in a firm during part only of an accounting period, his personal liability for levy incurred by the firm in respect of taxable supplies made in that period shall include, but shall not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances.

#### Marginal Citations

M28 1890 c. 39.

M29 1890 c. 39.

#### *Death and incapacity*

- 118 (1) The Commissioners may, in accordance with sub-paragraph (2), by regulations make provision for the purposes of the levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.
- (2) The provisions that may be contained in regulations under this paragraph are—
- (a) provision requiring the person who is carrying on the business to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
- (b) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and
- (c) such other provision as the Commissioners think fit for securing continuity in the application of this Schedule where a person is so treated.

#### *Transfer of a business as a going concern*

- 119 (1) The Commissioners may by regulations make provision for securing continuity in the application of this Schedule in cases where any business carried on by a person is transferred to another person as a going concern.
- (2) Regulations under this paragraph may, in particular, include any or all of the following—
- (a) provision requiring the transferor to inform the Commissioners of the transfer;

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- (b) provision for liabilities and duties under this Schedule of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;
  - (c) provision for any right of either of them to a tax credit or repayment of levy to be satisfied by allowing the credit or making the repayment to the other;
  - (d) provision as to the preservation of any records or accounts relating to the business which, by virtue of any regulations under paragraph 125, are required to be preserved for any period after the transfer.
- (3) Regulations under this paragraph may provide that no such provision as is mentioned in paragraph (b) or (c) of sub-paragraph (2) shall have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations.

*Insolvency etc.*

- 120 (1) The Commissioners may by regulations make provision in accordance with the following provisions of this paragraph for the application of this Schedule in cases in which an insolvency procedure is applied to a person or to a deceased individual's estate.

In this paragraph "the relevant person" means the person to whom, or the deceased individual to whose estate, the insolvency procedure is applied.

- (2) The provision that may be contained in regulations under this paragraph may include any or all of the following—
- (a) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter;
  - (b) provision requiring a person to be treated, to the prescribed extent, as if he were the same person as the relevant person for the purposes of this Schedule or such of its provisions as may be prescribed; and
  - (c) provision for securing continuity in the application of any of the provisions of this Schedule where, by virtue of any regulations under this paragraph, any person is treated as if he were the same person as the relevant person.
- (3) In sub-paragraph (2) "relevant matter", in relation to a case in which an insolvency procedure is applied to any person or to any deceased individual's estate, means—
- (a) the application of that procedure to that person or estate;
  - (b) the appointment of any person for the purposes of the application of that procedure;
  - (c) any other matter relating to—
    - (i) the application of that procedure to the person to whom, or the estate to which, it is applied;
    - (ii) the holding of an appointment made for the purposes of that procedure; or
    - (iii) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment.
- (4) Regulations made by virtue of sub-paragraph (2)(b) may include provision for a person to cease to be treated as if he were the same person as the relevant person on the occurrence of such an event as may be prescribed.

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- (5) Regulations under this paragraph prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations.
- (6) Regulations under this paragraph may provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the relevant person may be determined by reference to a notice given in accordance with the regulations to the person so treated.
- (7) For the purposes of this paragraph, an insolvency procedure is applied to a person if—
- (a) a bankruptcy order, winding-up order or administration order is made in relation to that person or a partnership of which he is a member;
  - (b) an award of sequestration is made on that person's estate or on the estate of a partnership of which he is a member;
  - (c) that person is put into administrative receivership;
  - (d) that person passes a resolution for voluntary winding up;
  - (e) any voluntary arrangement approved in accordance with—
    - (i) Part I or VIII of the <sup>M30</sup>Insolvency Act 1986, or
    - (ii) Part II or Chapter II of Part VIII of the <sup>M31</sup>Insolvency (Northern Ireland) Order 1989,comes into force in relation to that person or a partnership of which that person is a member;
  - (f) a deed of arrangement registered in accordance with—
    - (i) the <sup>M32</sup>Deeds of Arrangement Act 1914, or
    - (ii) Chapter I of Part VIII of that Order,takes effect in relation to that person;
  - (g) a person is appointed as the receiver or manager of some or all of that person's property, or of income arising from some or all of his property;
  - (h) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;
  - (i) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;
  - (j) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or
  - (k) that person's estate, or the estate of a partnership of which that person is a member, becomes vested in any other person as that person's, or the partnership's, trustee under a trust deed (within the meaning of the <sup>M33</sup>Bankruptcy (Scotland) Act 1985).
- (8) For the purposes of this paragraph, an insolvency procedure is applied to a deceased individual's estate if—
- (a) a bankruptcy order, or an order by some other name but corresponding to a bankruptcy order, is made after the individual's death in relation to his estate under provisions of—
    - (i) the Insolvency Act 1986, or
    - (ii) the Insolvency (Northern Ireland) Order 1989,

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- as applied to the administration of the insolvent estates of deceased individuals; or
- (b) an award of sequestration is made on the individual's estate after the individual's death.
- (9) In sub-paragraph (7)—
- (a) “administration order” means an administration order under section 8 of <sup>M34</sup>the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;
- (b) references to a member of a partnership include references to any person who is liable as a partner under section 14 of the <sup>M35</sup>Partnership Act 1890 (persons liable by “holding out”).

#### Marginal Citations

- M30** 1986 c. 45.  
**M31** S.I. 1989/2405 (N.I. 19).  
**M32** 1914 c. 47.  
**M33** 1985 c. 66.  
**M34** S.I. 1989/2405 (N.I. 19).  
**M35** 1890 c. 39.

## PART XI

### REVIEW AND APPEAL

#### *Review of Commissioners' decisions*

- 121 (1) This paragraph applies to a decision of the Commissioners with respect to any of the following matters—
- (a) whether or not a person is charged in any case with an amount of levy;
- (b) the amount of levy charged in any case and the time when the charge is to be taken as having arisen;
- (c) the registration of any person for the purposes of the levy or the cancellation of any registration;
- (d) the person liable to pay the levy charged in any case, the amount of a person's liability to levy and the time by which he is required to pay an amount of levy;
- (e) whether to prepare a special utility scheme for a utility;
- (f) the imposition of a requirement on any person to give security, or further security, under paragraph 139 and the amount and manner of providing any security required under that paragraph;
- (g) whether or not liability to a penalty or to interest on any amount arises in any person's case under any provision made by or under this Schedule, and the amount of any such liability;
- (h) any matter the decision as to which is reviewable under this paragraph of this Part of this Schedule in accordance with paragraph 99(6) or (7);



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- (i) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners under this Schedule to pay interest on any amount;
  - (j) whether or not any person is required to have a tax representative by virtue of any regulations under paragraph 114;
  - (k) the giving, withdrawal or variation, for the purposes of any such regulations, of any approval or direction with respect to the person who is to act as another's tax representative;
  - (l) the giving, withdrawal or variation of a utility direction under paragraph 151(1);
  - (m) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;
  - (n) any matter not falling within the preceding paragraphs the decision with respect to which is contained in—
    - (i) an assessment under paragraph 78 or 79 in respect of an accounting period in relation to which any return required to be made by virtue of regulations under paragraph 41 has been made, or
    - (ii) an assessment under any provision of this Schedule other than paragraph 78 or 79.
- (2) Any person who is or will be affected by any decision to which this paragraph applies may by notice in writing to the Commissioners require them to review the decision.
- (3) The Commissioners shall not be required under this paragraph to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of an assessment containing or giving effect to the decision, was first given to the person requiring the review.
- (4) For the purposes of sub-paragraph (3) it shall be the duty of the Commissioners to give written notification of any decision to which this paragraph applies to any person who—
- (a) requests such a notification;
  - (b) has not previously been given written notification of that decision; and
  - (c) if given such a notification, will be entitled to require a review of the decision under this paragraph.
- (5) A person shall be entitled to give a notice under this paragraph requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.
- (6) Where the Commissioners are required by a notice under this paragraph to review any decision, it shall be their duty to do so.

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- (7) On a review under this paragraph the Commissioners may (subject to subparagraph (9)) withdraw, vary or confirm the decision reviewed.
- (8) Where—
- (a) it is the duty under this paragraph of the Commissioners to review any decision, and
  - (b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review,
- they shall be deemed to have confirmed the decision.
- (9) Where the Commissioners decide, on a review under this paragraph, that a liability to a penalty or to an amount of interest arises, they shall not be entitled to modify the amount payable in respect of that liability except—
- (a) in exercise of a power conferred by paragraph 104(1) (penalties) or paragraph 70(6), 86(3) or 109(5) (penalty interest); or
  - (b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Schedule.
- (10) This paragraph has effect subject to paragraph 99(5).

#### *Appeals against reviewed decisions*

- 122 (1) Subject to the following provisions of this paragraph, an appeal shall lie to an appeal tribunal with respect to any of the following decisions—
- (a) any decision by the Commissioners on a review under paragraph 121 (including a deemed confirmation under paragraph 121(8));
  - (b) any decision by the Commissioners on any such review of a decision referred to in paragraph 121(1) as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in paragraph 121(3).
- (2) Where an appeal under this paragraph relates to a decision (whether or not contained in an assessment) that an amount of levy is due from any person, that appeal shall not be entertained unless—
- (a) the amount which the Commissioners have determined to be due has been paid or deposited with them; or
  - (b) on being satisfied that the appellant would otherwise suffer hardship—
    - (i) the Commissioners agree, or
    - (ii) the appeal tribunal decide,
 that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- (3) On an appeal under this paragraph relating to a penalty under paragraph 98 (evasion), the burden of proof as to the matters specified in paragraphs (a) and (b) of subparagraph (1) of that paragraph shall lie upon the Commissioners.

#### *Determinations on appeal*

- 123 (1) Where, on an appeal under paragraph 122—

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- (a) it is found that an assessment of the appellant made, confirmed or treated as confirmed by the Commissioners on a review under paragraph 121 (“the original assessment”) is an assessment for an amount that is less than it ought to have been, and
  - (b) the appeal tribunal give a direction specifying the correct amount, the assessment shall have effect as an assessment of the amount specified in the direction and (without prejudice to any power under this Schedule to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment.
- (2) On an appeal under paragraph 122, the powers of the appeal tribunal in relation to any decision of the Commissioners shall include a power, where the tribunal allow an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either—
  - (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct; or
  - (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision.
- (3) Where, on an appeal under paragraph 122, the appeal tribunal find that a liability to a penalty or to an amount of interest arises, the tribunal shall not give any direction for the modification of the amount payable in respect of that liability except—
  - (a) in exercise of a power conferred on the tribunal by paragraph 104(1) (penalties) or paragraph 70(6) or (9), 86(3) or (6) or 109(5) or (8) (penalty interest); or
  - (b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Schedule.
- (4) Where, on an appeal under paragraph 122, it is found that the whole or part of any amount paid or deposited in pursuance of paragraph 122(2) is not due, so much of that amount as is found not to be due shall be repaid with interest at such rate as the appeal tribunal may determine.
- (5) Where, on an appeal under paragraph 122, it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit has not been paid, so much of that amount as is found not to have been paid shall be paid with interest at such rate as the appeal tribunal may determine.
- (6) Where—
  - (a) an appeal under paragraph 122 has been entertained notwithstanding that an amount determined by the Commissioners to be payable as levy has not been paid or deposited, and
  - (b) it is found on the appeal that that amount is due,the appeal tribunal may, if they think fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (7) Sections 85 and 87 of the <sup>M36</sup>Value Added Tax Act 1994 (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if—
  - (a) the references to section 83 of that Act included references to paragraph 122; and
  - (b) the references to value added tax included references to levy.

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### Marginal Citations

M36 1994 c. 23.

## PART XII

### INFORMATION AND EVIDENCE

#### *Provision of information*

- 124 (1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall provide the Commissioners with such information relating to the matters in which he is or has been involved as the Commissioners may reasonably require.
- (2) Information required under sub-paragraph (1) shall be provided to the Commissioners within such period after being required, and in such form, as the Commissioners may reasonably require.
- (3) Subject to sub-paragraphs (4) and (5) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to provide information which he is required to provide under this paragraph, he shall be liable—
- (a) to a penalty of £250; and
  - (b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the required information is provided.
- (4) Liability to a penalty specified in sub-paragraph (3) shall not arise if the person required to provide the information satisfies the Commissioners or, on appeal, an appeal tribunal—
- (a) in the case of the penalty under paragraph (a) of that sub-paragraph that there is a reasonable excuse—
    - (i) for the initial failure to provide the required information on or before the last relevant date; and
    - (ii) for every subsequent failure to provide it;
 and
  - (b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to provide the information on or before that day.
- (5) Where, by reason of any failure by any person to provide information required under this paragraph—
- (a) that person is convicted of an offence (whether under this Act or otherwise), or
  - (b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),
- that person shall not by reason of that failure be liable also to a penalty under this paragraph.
- (6) In this paragraph “the last relevant date” means the last day of the period within which the person in question was required to provide the information.

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### *Records*

- 125 (1) The Commissioners may by regulations impose obligations to keep records on persons who are, or are required to be, registered.
- (2) Regulations under this paragraph may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (3) Regulations under this paragraph may—
- (a) require any records kept in pursuance of the regulations to be preserved for such period, not exceeding six years, as may be specified in the regulations;
  - (b) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations;
  - (c) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate.
- (4) Any duty under regulations under this paragraph to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.
- (5) The Commissioners may, as a condition of approving under sub-paragraph (4) any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.
- (6) Subject to sub-paragraphs (7) and (8), a person who fails to preserve any record in compliance with—
- (a) any regulations under this paragraph, or
  - (b) any notice, direction or requirement given or imposed under such regulations,
- shall be liable to a penalty of £250.
- (7) A failure such as is mentioned in sub-paragraph (6) shall not give rise to any penalty under that sub-paragraph if the person required to preserve the record satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.
- (8) Where, by reason of any such failure by any person as is mentioned in sub-paragraph (6)—
- (a) that person is convicted of an offence (whether under this Act or otherwise), or
  - (b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),
- that person shall not by reason of that failure be liable also to a penalty under this paragraph.
- (9) The Commissioners may if they think fit at any time modify or withdraw any approval or requirement given or imposed for the purposes of this paragraph.

### *Evidence of records that are required to be preserved*

- 126 (1) Subject to the following provisions of this paragraph, where any obligation to preserve records is discharged in accordance with paragraph 125(4), a copy of

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any document forming part of the records shall be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.

- (2) A statement contained in a document produced by a computer shall not by virtue of this paragraph be admissible in evidence—
- (a) in criminal proceedings in England and Wales, except in accordance with Part II of the <sup>M37</sup>Criminal Justice Act 1988;
  - (b) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M38</sup>Civil Evidence (Scotland) Act 1988;
  - (c) in criminal proceedings in Scotland, except in accordance with Schedule 8 to the Criminal Procedure (Scotland) Act 1995;
  - (d) in criminal proceedings in Northern Ireland, except in accordance with Part II of the <sup>M39</sup>Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

#### **Marginal Citations**

**M37** 1988 c. 33.

**M38** 1988 c. 32.

**M39** S.I. 1988/1847 (N.I. 17).

#### *Production of documents*

- 127 (1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall upon demand made by an authorised person produce or cause to be produced for inspection by that person any documents relating to the matters in which he is or has been involved.
- (2) Where, by virtue of sub-paragraph (1), an authorised person has power to require the production of any documents from any person—
- (a) he shall have the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; and
  - (b) the production of any document by that other person in pursuance of a requirement under this sub-paragraph shall be without prejudice to any lien claimed by that other person on that document.
- (3) The documents mentioned in sub-paragraphs (1) and (2) shall be produced at such time and place as the authorised person may reasonably require.
- (4) Subject to sub-paragraphs (5) and (6) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to produce any document which he is required to produce under this paragraph, he shall be liable—
- (a) to a penalty of £250; and
  - (b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the document is produced.
- (5) Liability to a penalty specified in sub-paragraph (4) shall not arise if the person required to produce the document in question satisfies the Commissioners or, on appeal, an appeal tribunal—
- (a) in the case of the penalty under paragraph (a) of that sub-paragraph, that there is a reasonable excuse—

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- (i) for the initial failure to produce the document at the required time;  
and
  - (ii) for every subsequent failure to produce it;  
and
  - (b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to produce the document on or before that day.
- (6) Where, by reason of any failure by any person to provide information required under this paragraph—
  - (a) that person is convicted of an offence (whether under this Act or otherwise),  
or
  - (b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),  
that person shall not by reason of that failure be liable also to a penalty under this paragraph.
- (7) In this paragraph “the last relevant date” means the last day of the period within which the person in question was required to produce the document.

#### *Powers in relation to documents produced*

- 128 (1) An authorised person may take copies of, or make extracts from, any document produced under paragraph 127.
- (2) If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document produced under paragraph 127.
- (3) An authorised person who removes any document under sub-paragraph (2) shall, if requested to do so, provide a receipt for the document so removed.
- (4) Where a lien is claimed on a document produced under paragraph 127(2), the removal of the document under sub-paragraph (2) shall not be regarded as breaking the lien.
- (5) Where a document removed by an authorised person under sub-paragraph (2) is reasonably required for any purpose he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.
- (6) Where any documents removed under the powers conferred by this paragraph are lost or damaged, the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

#### *Entry and inspection*

- 129 For the purpose of exercising any powers under this Schedule, an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business.

#### *Entry and search*

- 130 (1) Where—
  - (a) a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that a fraud offence which appears to be

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of a serious nature is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or

- (b) in Scotland a justice (within the meaning of section 307 of the <sup>M40</sup>Criminal Procedure (Scotland) Act 1995) is satisfied by evidence on oath as mentioned in paragraph (a),

he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

- (2) A person who enters the premises under the authority of the warrant may—
- (a) take with him such other persons as appear to him to be necessary;
  - (b) seize and remove any such documents or other things at all found on the premises as he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature;
  - (c) search, or cause to be searched, any person found on the premises whom he has reasonable cause to believe to be in possession of any documents or other things which may be so required.
- (3) Sub-paragraph (2) shall not authorise any person to be searched by a member of the opposite sex.
- (4) The powers conferred by a warrant under this paragraph shall not be exercisable—
- (a) by more than such number of authorised persons as may be specified in the warrant;
  - (b) outside such periods of the day as may be so specified; or
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.
- (5) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, such one of them as is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;
  - (b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person;
  - (c) if neither paragraph (a) nor paragraph (b) applies, the copy shall be left in a prominent place on the premises.
- (6) In this paragraph “a fraud offence” means an offence under any of paragraphs 92 to 94.

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

C1 Sch. 6 para. 130(2): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 72; S.I. 2003/708, art. 2(a)

**Marginal Citations**

M40 1995 c. 46.



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*Order for access to recorded information etc.*

- 131 (1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 307 of the <sup>M41</sup>Criminal Procedure (Scotland) Act 1995) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with levy is being, has been or is about to be committed, and
  - (b) that any recorded information (including any document of any nature at all) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,
- he may make an order under this paragraph.
- (2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—
- (a) give an authorised person access to it, and
  - (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,
- not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify.
- (3) The reference in sub-paragraph (2)(a) to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.
- (4) Where the recorded information consists of information contained in a computer, an order under this paragraph shall have effect as an order to produce the information—
- (a) in a form in which it is visible and legible; and
  - (b) if the authorised person wishes to remove it, in a form in which it can be removed.
- (5) This paragraph is without prejudice to the preceding paragraphs of this Part of this Schedule.

**Marginal Citations**

M41 1995 c. 46.

*Removal of documents etc.*

- 132 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 130 or 131 shall, if so requested by a person showing himself—
- (a) to be the occupier of premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal,
- provide that person with a record of what he removed.
- (2) The authorised person shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to sub-paragraph (7), if a request for permission to be allowed access to anything which—
- (a) has been removed by an authorised person, and

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- (b) is retained by the Commissioners for the purposes of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.
- (4) Subject to sub-paragraph (7), if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it; or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Subject to sub-paragraph (7), where anything is photographed or copied under sub-paragraph (4)(b), the officer shall supply the photograph or copy, or cause it to be supplied, to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this paragraph to allow access to anything, or to supply a photograph or copy of anything, if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation;
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
  - (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b).
- (8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.

#### *Enforcement of paragraph 132*

- 133 (1) Where, on an application made as mentioned in sub-paragraph (2), the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 132, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.
- (2) An application under sub-paragraph (1) shall not be made except—
- (a) in the case of a failure to comply with any of the requirements imposed by paragraph 132(1) and (2)—
    - (i) by the occupier of the premises from which the thing in question was removed, or
    - (ii) by the person who had custody or control of it immediately before it was so removed;
  - (b) in any other case, by the person who had such custody or control.

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- (3) In this paragraph “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates’ court;
  - (b) in Scotland, the sheriff;
  - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the <sup>M42</sup>Magistrates’ Courts (Northern Ireland) Order 1981.
- (4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the <sup>M43</sup>Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

**Marginal Citations**

**M42** S.I. 1981/1675 (N.I. 26.)

**M43** 1954 c. 33 (N.I.).

*Power to take samples and examine meters*

- 134 (1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is—
- (a) a taxable commodity which is intended to be, is being or has been the subject of a taxable supply, or
  - (b) a product of the burning of a taxable commodity (other than electricity) which is being or has been the subject of a taxable supply,
- such samples as he may require with a view to determining how the material ought to be treated, or to have been treated, for the purposes of the levy.
- (2) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time examine any meter which he has reasonable cause to believe is intended to be, is being or has been used for ascertaining the quantity of any taxable commodity supplied by a taxable supply.
- (3) Any sample taken under sub-paragraph (1) shall be disposed of in such manner as the Commissioners may direct.

*Evidence by certificate*

- 135 (1) In any proceedings a certificate of the Commissioners—
- (a) that a person was or was not at any time registered for the purposes of the levy,
  - (b) that any return required by regulations made under paragraph 41 has not been made or had not been made at any time,
  - (c) that any levy shown as due in a return made in pursuance of regulations made under paragraph 41 has not been paid, or
  - (d) that any amount shown as due in any assessment made under this Schedule has not been paid,
- shall be evidence or, in Scotland, sufficient evidence of that fact.

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- (2) A photograph of any document provided to the Commissioners for the purposes of this Schedule and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) In any proceedings any document purporting to be a certificate under sub-paragraph (1) or (2) shall be taken to be such a certificate unless the contrary is shown.

*Inducements to provide information*

- 136 (1) This paragraph applies—
- (a) to any criminal proceedings against a person in respect of an offence in connection with or in relation to levy; and
  - (b) to any proceedings against a person for the recovery of any sum due from him in connection with or in relation to levy.
- (2) Statements made or documents produced or provided by or on behalf of a person shall not be inadmissible in any proceedings to which this paragraph applies by reason only that—
- (a) a matter falling within sub-paragraph (3) or (4) has been drawn to that person's attention; and
  - (b) he was or may have been induced, as a result, to make the statements or to produce or provide the documents.
- (3) The matters falling within this sub-paragraph are—
- (a) that, in relation to levy, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings;
  - (b) that it is the practice of the Commissioners (without giving any undertaking as to whether they will make such an assessment in any case) to be influenced by whether a person—
    - (i) has made a full confession of any dishonest conduct to which he has been a party; and
    - (ii) has otherwise co-operated to the full with any investigation.
- (4) The matter falling within this sub-paragraph is the fact that the Commissioners or, on appeal, an appeal tribunal have power under any provision of this Schedule to reduce a penalty.

*Disclosure of information*

- 137 (1) Notwithstanding any obligation not to disclose information that would otherwise apply, but subject to sub-paragraph (2), the Commissioners may disclose any information obtained or held by them in or in connection with the carrying out of their functions in relation to the levy to any of the following—
- (a) any Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) any Minister, within the meaning of the <sup>M44</sup>Northern Ireland Act 1998, or any Northern Ireland department;
  - (d) the National Assembly for Wales;
  - (e) the Environment Agency;
  - (f) the Scottish Environment Protection Agency;
  - (g) the Gas and Electricity Markets Authority;

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- (h) the Director General of Electricity Supply for Northern Ireland;
  - (i) the Director General of Gas for Northern Ireland;
  - (j) an authorised officer of any person mentioned in paragraphs (a) to (i).
- (2) Information shall not be disclosed under sub-paragraph (1) except for the purpose of assisting a person falling within paragraphs (a) to (j) of that sub-paragraph in the performance of his duties.
- (3) Notwithstanding any such obligation as is mentioned in sub-paragraph (1), any person mentioned in sub-paragraph (1)(a) to (j) may disclose information—
- (a) to the Commissioners, or
  - (b) to an authorised officer of the Commissioners,
- for the purpose of assisting the Commissioners in the performance of duties in relation to the levy.
- (4) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
- (a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made; or
  - (b) for the purpose of any proceedings connected with the operation of any provision made by or under any enactment relating to the environment or to levy.
- (5) References in the preceding provisions of this paragraph to an authorised officer of any person (“the principal”) are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this paragraph.
- (6) Where the principal is a person falling within any of paragraphs (a) to (c) of sub-paragraph (1), the principal shall notify the Commissioners in writing of the name of any person designated by the principal for the purposes of this paragraph.
- (7) No charge may be made for any disclosure made by virtue of this paragraph.
- (8) In this paragraph “enactment” includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation.

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**Marginal Citations**

**M44** 1998 c. 47.

*Meaning of “authorised person”*

138 In this Part of this Schedule “authorised person” means any person acting under the authority of the Commissioners.

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### PART XIII

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Security for levy*

- 139 (1) Where it appears to the Commissioners necessary to do so for the protection of the revenue they may require any person who is or is required to be registered for the purposes of the levy to give security, or further security, for the payment of any levy which is or may become due from him.
- (2) The power of the Commissioners to require any security, or further security, under this paragraph shall be a power to require security, or further security, of such amount and in such manner as they may determine.
- (3) A person who is liable to account for the levy on a taxable supply that he makes is guilty of an offence if, at the time the supply is made—
- (a) he has been required to give security under this paragraph, and
  - (b) he has not complied with that requirement.
- (4) A person who is liable to account for the levy on a taxable supply that another person makes to him is guilty of an offence if he makes any arrangements for the making of the supply at a time when—
- (a) he has been required to give security under this paragraph, and
  - (b) he has not complied with that requirement.
- (5) A person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.
- (6) Sections 145 to 155 of the <sup>M45</sup>Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to an offence under this paragraph as they apply in relation to offences and penalties under the customs and excise Acts.

#### **Marginal Citations**

**M45** 1979 c. 2.

##### *Destination of receipts*

- 140 All money and securities for money collected or received for or on account of levy shall—
- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979; and
  - (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

##### *Provisional collection of levy*

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#### Textual Amendments

**F20** Sch. 6 para. 141 repealed (11.5.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. 3(3)

### *Adjustment of contracts*

VALID FROM 24/07/2002

#### *Invoices incorrectly showing levy due*

[<sup>F21</sup>141(A) This paragraph applies where—

- (a) a person issues an invoice showing an amount as levy chargeable on a supply, and
  - (b) no levy is chargeable on the supply, or the amount chargeable is less than the amount shown.
- (2) The person shall be liable to a penalty unless he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inclusion in the invoice of the false information.
- (3) The amount of the penalty is £50 or, if more, the following amount—
- (a) where no levy is chargeable, the amount shown as chargeable;
  - (b) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable.
- (4) It is irrelevant for the purposes of sub-paragraph (1) whether or not the supply shown on the invoice actually takes place or has taken place.
- (5) A reference in this paragraph to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document).]

#### Textual Amendments

**F21** Sch. 6 para. 141A inserted (24.7.2002 with application as mentioned in s. 128(2) of the amending Act) by 2002 c. 23, s. 128

- 142 (1) Sub-paragraph (2) applies in the case of a contract for the supply of a taxable commodity if—
- (a) the contract is entered into before 1st April 2001 (whether before or after the passing of this Act) or at a time when supplies such as are provided for by the contract are not taxable supplies, but
  - (b) supplies falling to be made under the contract will be, or become or will become, taxable supplies.
- (2) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of passing on, to the person liable to pay for the supply, the burden (or any part of the burden) of the levy for which the supplier is liable to account on the supply.

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- (3) Sub-paragraph (4) applies in the case of a contract for the supply of a taxable commodity if it provides (whether as a result of a variation under sub-paragraph (2) or otherwise) for the passing on, to the person liable to pay for the supply, of the burden (or any part of the burden) of any levy for which the supplier is liable to account on the supply.
- (4) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of giving effect (to any extent) to—
- (a) any change in the rate at which levy is charged on the supply;
  - (b) levy ceasing to be chargeable on the supply.
- (5) The powers conferred by this paragraph are in addition to any contractual powers.

*Climate change levy accounting documents*

- 143 (1) Provision may be made by regulations requiring registered persons who make taxable supplies—
- (a) in prescribed cases, or
  - (b) to persons of prescribed descriptions,
- to provide the persons supplied with climate change levy accounting documents.
- (2) For the purposes of this Schedule a “climate change levy accounting document” for a taxable supply is an invoice—
- (a) stating that it is a climate change levy accounting document (for which purpose the inclusion of the phrase “climate change levy accounting document” or the phrase “CCL accounting document”, whether as shown here or with any of the letters shown here as small letters appearing as capitals, shall be sufficient),
  - (b) stating the date on which it is issued, and
  - (c) containing the required statements.
- (3) For the purposes of sub-paragraph (2)(c) “the required statements” means—
- (a) in the case of a climate change levy accounting document issued under paragraph 27, the statements required by paragraph 27(5);
  - (b) in the case of a climate change levy accounting document whose provision is required by regulations, statements of prescribed particulars of or relating to—
    - (i) the supply,
    - (ii) the persons by and to whom the supply is made, and
    - (iii) the levy chargeable.
- (4) Where regulations make provision requiring a climate change levy accounting document to be provided in connection with any description of supply, regulations may make provision for—
- (a) requiring the accounting document to be provided within a prescribed time after, or at a prescribed time before, the supply is treated as taking place;
  - (b) allowing an accounting document to be provided later than required by the regulations where it is provided in accordance with general or special directions given by the Commissioners.



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- (5) Regulations may make provision conferring power on the Commissioners to allow the requirements of any regulations as to the statements to be contained in a climate change levy accounting document to be relaxed or dispensed with.
- (6) Regulations may make provision for allowing a climate change levy accounting document required to be issued under paragraph 27 to be issued later than the time applicable under paragraph 27(2) where it is issued in accordance with general or special directions given by the Commissioners.
- (7) In this paragraph “regulations” means regulations made by the Commissioners.

*Service of notices etc.*

- 144
- (1) Any notice, notification or requirement that is to be or may be served on, given to or imposed on any person for the purposes of any provision made by or under this Schedule may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or his representative at the latest or usual residence or place of business of that person or representative.
  - (2) Any direction required or authorised by or under this Schedule to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business.

*Variation and withdrawal of directions etc.*

- 145
- Any direction, notice or notification required or authorised by or under this Schedule to be given by the Commissioners may be withdrawn or varied by them by a direction, notice or notification given in the same manner as the one withdrawn or varied.

*Regulations and orders*

- 146
- (1) Any power under this Schedule to make regulations shall be exercisable by statutory instrument.
  - (2) A statutory instrument that—
    - (a) contains regulations made under this Schedule, and
    - (b) is not subject to a requirement that a draft of the instrument be laid before Parliament and approved by a resolution of the House of Commons,shall be subject to annulment in pursuance of a resolution of the House of Commons.
  - (3) A statutory instrument that contains (whether alone or with other provisions) regulations under paragraph 3(3), 14(3), 15(4)(a), 16, 18(2), 52, 113(1), 148(4), 149 or 151(2) (regulations made by the Treasury) shall not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of the House of Commons.
  - (4) Where regulations under this Schedule made by the Commissioners impose a relevant requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable, subject to sub-paragraph (5), to a penalty of £250.
  - (5) Where by reason of any conduct—
    - (a) a person is convicted of an offence (whether under this Act or otherwise), or

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- (b) a person is assessed to a penalty under paragraph 98, that person shall not by reason of that conduct be liable also to a penalty under any regulations under this Schedule.
- (6) In sub-paragraph (4) “relevant requirement” means any requirement other than one the penalty for a contravention of which is specified in paragraph 41(3), 114(3) or 125(6).
- (7) A power under this Schedule to make any provision by regulations—
- (a) may be exercised so as to apply the provision only in such cases as may be described in the regulations;
  - (b) may be exercised so as to make different provision for different cases or descriptions of case; and
  - (c) shall include power by the regulations to make such supplementary, incidental, consequential or transitional provision as the authority making the regulations may think fit.

## PART XIV

### INTERPRETATION

#### *General*

147 In this Schedule—

“accounting period” means a period which, in pursuance of any regulations under paragraph 41, is an accounting period for the purposes of the levy;

“agreement” includes any arrangement or understanding (whether or not legally enforceable), and cognate expressions shall be construed accordingly;

“appeal tribunal” means a VAT and duties tribunal;

“auto-generator” has the meaning given by paragraph 152;

“climate change agreement” has the meaning given by paragraph 46;

“climate change levy accounting document” has the meaning given by paragraph 143(2);

“combined heat and power station” has the meaning given by paragraph 148(1);

“the Commissioners” means the Commissioners of Customs and Excise;

“conduct” includes acts and omissions;

“electricity utility” has the meaning given by paragraph 150(2) (but see paragraph 150(4));

“fully exempt combined heat and power station” has the meaning given by paragraph 148(2);

“gas utility” has the meaning given by paragraph 150(3) (but see paragraph 150(4));

“half-rate supply” has the meaning given by paragraph 43(1);

“member”, in relation to a group, shall be construed in accordance with regulations under paragraph 116;

“non-resident taxpayer” means a person who—

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- (a) is or is required to be registered for the purposes of the levy, and
  - (b) is not resident in the United Kingdom;
- “partly exempt combined heat and power station” has the meaning given by paragraph 148(3);
- “prescribed” (except in paragraphs 14(3), 16(3) and 148(4)) means prescribed by regulations made by the Commissioners under this Schedule;
- “produced”—
- (a) in relation to electricity, means generated, and
  - (b) in relation to any other commodity, includes extracted;
- “reduced-rate supply” has the meaning given by paragraph 44(3) (which, by virtue of paragraph 44(4), has effect subject to paragraph 45);
- “registered” means registered in the register maintained under paragraph 53(2);
- “representative member”, in relation to a group, shall be construed in accordance with regulations under paragraph 116;
- “resident in the United Kingdom” has the meaning given by paragraph 156;
- “ship” includes hovercraft;
- “special utility scheme” has the meaning given by paragraph 29(1);
- “subordinate legislation” has the same meaning as in the <sup>M46</sup>Interpretation Act 1978;
- “supply for charity use” shall be construed in accordance with paragraph 8;
- “supply for domestic use” shall be construed in accordance with paragraphs 8 and 9;
- “tax credit” means a tax credit for which provision is made by tax credit regulations;
- “tax credit regulations” means regulations under paragraph 62;
- “tax representative”, in relation to any person, means the person who, in accordance with any regulations under paragraph 114, is for the time being that person’s tax representative for the purposes of the levy;
- “taxable commodity” shall be construed in accordance with paragraph 3;
- “taxable supply” shall be construed in accordance with paragraphs 2(2) and 4;
- “the United Kingdom” includes the territorial waters adjacent to any part of the United Kingdom;
- “utility” has the meaning given by paragraph 150(1).

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**Marginal Citations**

**M46** 1978 c. 30.

*Meaning of “combined heat and power station” etc.*

- 148 (1) In this Schedule “combined heat and power station” means a station producing electricity or motive power that is (or may be) operated for purposes including the supply to any premises of—

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- (a) heat produced in association with electricity or motive power, or
  - (b) steam produced from, or air or water heated by, such heat.
- (2) In this Schedule “fully exempt combined heat and power station” means a combined heat and power station in respect of which there is in force a certificate (a “full-exemption certificate”)—
- (a) given by the Secretary of State,
  - (b) stating that the station is a fully exempt combined heat and power station for the purposes of the levy, and
  - (c) complying with sub-paragraph (6) and (so far as applicable) any provision made by regulations under sub-paragraph (10).
- (3) In this Schedule “partly exempt combined heat and power station” means a combined heat and power station in respect of which there is in force a certificate (a “part-exemption certificate”)—
- (a) given by the Secretary of State,
  - (b) stating that the station is a partly exempt combined heat and power station for the purposes of the levy, and
  - (c) complying with sub-paragraph (6) and (so far as applicable) any provision made by regulations under sub-paragraph (10).
- (4) The Secretary of State shall give a full-exemption certificate in respect of a combined heat and power station where—
- (a) an application is made for a certificate under this paragraph in respect of the station, and
  - (b) it appears to him that such conditions as may be prescribed are satisfied in relation to the station.
- For this purpose “prescribed” means prescribed by regulations made by the Treasury.
- (5) The Secretary of State shall give a part-exemption certificate in respect of a combined heat and power station where—
- (a) an application is made for a certificate under this paragraph in respect of the station, and
  - (b) his decision on the application is to refuse to give a full-exemption certificate.
- (6) A full-exemption or part-exemption certificate given in respect of a combined heat and power station shall state the percentage that, for the purposes of paragraph 15, is the efficiency percentage for the station determined in accordance with any regulations under paragraph 149.
- (7) In prescribing conditions under sub-paragraph (4), the Treasury must have regard to the object of securing that a combined heat and power station will only be a fully exempt combined heat and power station for the purposes of this Schedule if it is one in which electricity or motive power is produced concurrently with heat in a manner that makes efficient use of the commodities used in their production.
- (8) A condition prescribed under sub-paragraph (4) may, in particular, relate to any of the following—
- (a) a station’s outputs;
  - (b) the commodities used in the production of such outputs;

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- (c) the methods of producing such outputs;
  - (d) the efficiency with which such outputs are produced.
- (9) For the purposes of sub-paragraph (8), a station’s “outputs” are any electricity or motive power produced in the station and any of the following supplied from the station, namely—
- (a) heat or steam, or
  - (b) air, or water, that has been heated or cooled.
- (10) The Secretary of State may by regulations make provision for or about—
- (a) certificates under this paragraph;
  - (b) applications for such certificates;
  - (c) the information that is to accompany such applications.
- (11) The provision that may be made by virtue of sub-paragraph (10)(a) includes in particular—
- (a) provision in respect of the periods for which certificates under this paragraph are to be in force;
  - (b) provision for the (non-retrospective) variation or revocation of such certificates.

*Determination of efficiency percentages for combined heat and power stations*

- 149 (1) The Treasury may by regulations make provision for determining the percentage that is to be stated in a certificate under paragraph 148 as the efficiency percentage for a combined heat and power station.
- (2) Regulations under this paragraph may, in particular, include—
- (a) provision in respect of methods of calculating efficiency percentages;
  - (b) provision in respect of the measurements and data to be used in calculating such percentages;
  - (c) provision in respect of the procedures for determining such percentages;
  - (d) provision in respect of verifying—
    - (i) calculations by which such percentages are produced, and
    - (ii) measurements and data used in such calculations;
  - (e) provision that, so far as framed by reference to any document, is framed by reference to that document as from time to time in force.
- (3) In making provision under this paragraph, the Treasury must have regard to the object of securing that the efficiency percentage for a combined heat and power station is (save for any appropriate adjustments) a percentage that reflects a fair assessment of the efficiency with which commodities are transformed in the station into electricity or motive power.

VALID FROM 24/07/2002

*Certification of electricity from fully or partly exempt combined heat and power station*

- <sup>F22</sup>149(A) The Commissioners may by regulations make provision for the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, to certify as respects any quantity of electricity that—

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- (a) the electricity has been produced in a fully exempt combined heat and power station;
  - (b) the electricity has been produced in a partly exempt combined heat and power station and supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded.
- (2) Regulations under this paragraph may provide that for any purposes of this Schedule (or any regulations made under it)—
- (a) electricity is not to be regarded as having been produced as specified in sub-paragraph (1)(a) unless it has been certified under that provision;
  - (b) electricity is not to be regarded as having been produced and supplied as specified in sub-paragraph (1)(b) unless it has been certified under that provision.
- (3) Regulations under this paragraph may in particular provide that the supply of any electricity does not qualify for the exemption under paragraph 16(2) unless the electricity is certified as specified in sub-paragraph (1)(b).
- (4) Regulations under this paragraph may also make provision for determining whether electricity is produced and supplied as specified in sub-paragraph (1)(b).]

#### Textual Amendments

**F22** Sch. 6 para. 149A inserted (24.7.2002) by 2002 c. 23, s. 124

#### *Meaning of “utility”*

- 150 (1) In this Schedule “utility” means an electricity utility or a gas utility.
- (2) In this Schedule “electricity utility” means the holder of—
- (a) a licence under section 6(1)(d) of the <sup>M47</sup>Electricity Act 1989 (supply licences), or
  - (b) a licence under Article 10(1)(c) or (2) of the <sup>M48</sup>Electricity Supply (Northern Ireland) Order 1992,
- except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.
- Until the coming into force of the substitution for section 6 of the <sup>M49</sup>Electricity Act 1989 provided for by the Utilities Act 2000, paragraph (a) above shall have effect as if the reference to section 6(1)(d) were to section 6(1)(c) or (2).
- (3) In this Schedule “gas utility” means the holder of—
- (a) a licence under section 7A(1) of the <sup>M50</sup>Gas Act 1986 (supply licences), or
  - (b) a licence under Article 8(1)(c) of the <sup>M51</sup>Gas (Northern Ireland) Order 1996,
- except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.
- (4) Sub-paragraphs (1) to (3) have effect subject to—
- (a) any direction under paragraph 151(1), and
  - (b) any regulations under paragraph 151(2).

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#### Marginal Citations

- M47 1989 c. 29.
- M48 S.I. 1992/231 (N.I. 1).
- M49 2000 c. 27.
- M50 1986 c. 44.
- M51 S.I. 1996/275 (N.I. 2.)

#### *Person treated as, or as not being, a utility*

- 151 (1) The Commissioners may by direction (a “utility direction”) make, in respect of a person (or persons) specified in the direction, provision authorised by sub-paragraph (3).
- (2) The Treasury may by regulations (“utility regulations”) make, in respect of any person of a description specified in the regulations, provision authorised by sub-paragraph (3).
- (3) The provision authorised by this sub-paragraph is provision for—
- (a) a person who is an unregulated electricity supplier to be treated for levy purposes as being an electricity utility;
  - (b) a person who is an unregulated gas supplier to be treated for levy purposes as being a gas utility;
  - (c) a person who is an electricity utility to be treated for levy purposes as not being an electricity utility;
  - (d) a person who is a gas utility to be treated for levy purposes as not being a gas utility.
- (4) References in sub-paragraph (3) to provision for a person to be treated in a particular way for “levy purposes” are to provision for him to be treated in that way for—
- (a) the purposes of this Schedule, or
  - (b) such of those purposes as are specified in the direction or regulations by which the provision is made.
- (5) The power to make any provision by a utility direction or utility regulations may be exercised so that the provision applies in relation to a person only to an extent specified in, or determined under, the direction or regulations.
- (6) A utility direction cannot take effect until it has been—
- (a) given by the Commissioners to each person in respect of whom it makes provision, and
  - (b) published by the Commissioners.
- (7) Paragraph 146(7)(b) and (c) applies to the power to make provision by a utility direction as to a power to make provision by regulations.
- (8) In this paragraph—
- “unregulated electricity supplier” means a person who—
    - (a) makes supplies of electricity, and
    - (b) is not an electricity utility;
  - “unregulated gas supplier” means a person who—

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- (a) makes supplies of gas that is in a gaseous state and is of a kind supplied by a gas utility, and
- (b) is not a gas utility.

*Meaning of “auto-generator”*

- 152 (1) In this Schedule “auto-generator” means a person who produces electricity if the electricity that he produces is primarily for his own consumption.
- (2) The Commissioners may by regulations specify requirements to be fulfilled before the electricity that a person produces is, for the purposes of sub-paragraph (1), to be taken as produced primarily for his own consumption.
- (3) For the purposes of this paragraph, electricity is for a person’s own consumption if it is for consumption by him or a person connected with him within the meaning of section 839 of the Taxes Act 1988.

*Meaning of “levy due for an accounting period”*

- 153 References in this Schedule, in relation to any accounting period, to levy due from any person for that period are references (subject to any regulations made by virtue of paragraph 41(2)(a)) to the levy for which that person is required, in accordance with regulations under paragraph 41, to account by reference to that period.

*Meaning of “repayment of levy”*

- 154 References in this Schedule to a repayment of levy or of an amount of levy are references to any repayment of an amount to any person by virtue of—
- (a) any tax credit regulations; or
  - (b) paragraph 63, 87(3) or 110(3).

*Interpretation of “in the course or furtherance of a business”*

- 155 (1) Anything done in connection with the termination or intended termination of a business shall, for the purposes of this Schedule, be treated as being done in the course or furtherance of the business.
- (2) Where in a disposition of a business as a going concern, or of its assets (whether or not in connection with its reorganisation or winding up), there is a supply of a taxable commodity, that supply shall for the purposes of this Schedule be taken to be made in the course or furtherance of the business.

*Meaning of “resident in the United Kingdom”*

- 156 For the purposes of this Schedule a person is resident in the United Kingdom at any time if, at that time—
- (a) that person has an established place of business in the United Kingdom;
  - (b) that person has a usual place of residence in the United Kingdom; or
  - (c) that person is a firm or unincorporated body which (without having a relevant connection with the United Kingdom by virtue of paragraph (a)) has amongst its partners or members at least one individual with a usual place of residence in the United Kingdom.



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*References to the Gas and Electricity Markets Authority: transitional provision*

- 157 (1) Until such time as a transfer of functions from the Director General of Electricity Supply to the Gas and Electricity Markets Authority (“the Authority”) has taken effect, references in paragraph 19 to the Authority shall be taken to be references to the Director General.
- (2) Until such time as all the functions of the Director General of Electricity Supply have been transferred in accordance with the <sup>M52</sup>Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.
- (3) Until such time as all the functions of the Director General of Gas Supply have been transferred in accordance with the Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.
- (4) The power conferred by paragraph 146(7) includes, in particular, power for regulations under paragraph 19 to make transitional provision in connection with the transfer of functions from the Director General of Electricity Supply to the Authority.

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**Marginal Citations**

**M52** 2000 c. 27.

**Status:**

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