

Status: Point in time view as at 04/04/2005.

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SCHEDULES

SCHEDULE 7

Section 29.

AGGREGATES LEVY: INFORMATION AND EVIDENCE ETC

Provision of information

- 1 (1) Every person involved (in whatever capacity) in subjecting any aggregate to exploitation in the United Kingdom, 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) above 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) below and to paragraph 3(5) of Schedule 10 to this Act (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) above 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 7 of Schedule 6 to this Act (penalty for evasion),
- that person shall not by reason of that failure be liable also to a penalty under this paragraph.

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- (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.

Records

- 2 (1) The Commissioners may by regulations impose obligations to keep records on persons who are or are required to be registered and on persons who would be so required but for an exemption by virtue of regulations under section 24(4) of this Act.
- (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) above 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) below, 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) above 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) above—
- (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 7 of Schedule 6 to this Act (penalty for evasion),
- that person shall not by reason of that failure be liable also to a penalty under this paragraph.

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- (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

- 3 (1) Subject to the following provisions of this paragraph, where any obligation to preserve records is discharged in accordance with paragraph 2(4) above, a copy of 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—
- ^{F1}(a)
- (b) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the Civil Evidence (Scotland) Act 1988 (c. 32);
- (c) in criminal proceedings in Scotland, except in accordance with Schedule 8 to the Criminal Procedure (Scotland) Act 1995 (c. 46); or
- (d) in criminal proceedings in Northern Ireland, except in accordance with Part II of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)).

Textual Amendments

F1 Sch. 7 para. 3(2)(a) repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 37 Pt. 6](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 44\(3\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))

Production of documents

- 4 (1) Every person involved (in whatever capacity) in subjecting any aggregate to exploitation in the United Kingdom, 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) above, 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) above shall be produced at such time and place as the authorised person may reasonably require.
- (4) Subject to sub-paragraphs (5) and (6) below and to paragraph 3(5) of Schedule 10 to this Act (which relates to supplementary assessments of daily penalties), if a person

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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) above 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—
 - (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 7 of Schedule 6 to this Act (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

- 5
- (1) An authorised person may take copies of, or make extracts from, any document produced under paragraph 4 above.
 - (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 4 above.
 - (3) An authorised person who removes any document under sub-paragraph (2) above 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 4(2) above, the removal of the document under sub-paragraph (2) above shall not be regarded as breaking the lien.
 - (5) Where a document removed by an authorised person under sub-paragraph (2) above 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.

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- (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

- 6 For the purpose of exercising any powers under this Part of this Act 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

- 7 (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 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 Criminal Procedure (Scotland) Act 1995 (c. 46)) is satisfied by evidence on oath as mentioned in paragraph (a) above,
- 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) above 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;

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- (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) above 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 1 to 3 of Schedule 6 to this Act.

Order for access to recorded information etc.

- 8 (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 Criminal Procedure (Scotland) Act 1995 (c. 46)) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with aggregates 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) above 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 Schedule.

Removal of documents etc.

- 9 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 7 or 8 above 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.

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- (3) Subject to sub-paragraph (7) below, if a request for permission to be allowed access to anything which—
- (a) has been removed by an authorised person, and
 - (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) below, 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) below, where anything is photographed or copied under sub-paragraph (4)(b) above, 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) above.
- (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 9

- 10 (1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 9 above, 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) above shall not be made except—
- (a) in the case of a failure to comply with any of the requirements imposed by paragraph 9(1) and (2) above—

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- (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.
- (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 Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) .
- (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 Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

Power to take samples

- 11 (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 aggregate which is intended to be, is being, or has been subjected to exploitation in the United Kingdom, 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 aggregates levy.
- (2) Any sample taken under this paragraph shall be disposed of in such manner as the Commissioners may direct.

Evidence by certificate

- 12 (1) In any proceedings a certificate of the Commissioners—
- (a) that a person was or was not at any time registered,
 - (b) that any return required by regulations made under section 25 of this Act 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 section 25 of this Act has not been paid, or
 - (d) that any amount shown as due in any assessment made under this Part of this Act has not been paid,
- shall be evidence or, in Scotland, sufficient evidence of that fact.
- (2) A photograph of any document provided to the Commissioners for the purposes of this Part of this Act 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 subparagraph (1) or (2) above shall be taken to be such a certificate unless the contrary is shown.

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Inducements to provide information

- 13 (1) This paragraph applies—
- (a) to any criminal proceedings against a person in respect of an offence in connection with or in relation to aggregates 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 that 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) below 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 aggregates 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 Part of this Act to reduce a penalty.

Disclosure of information

- 14 (1) Notwithstanding any obligation not to disclose information that would otherwise apply but subject to sub-paragraph (2) below, 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 aggregates levy to any of the following—
- (a) any Minister of the Crown;
 - (b) the Scottish Ministers;
 - (c) any Minister, within the meaning of the Northern Ireland Act 1998 (c. 47), or any Northern Ireland department;
 - (d) the National Assembly for Wales;
 - (e) the Environment Agency;
 - (f) the Scottish Environment Protection Agency;
 - (g) a mineral planning authority in England and Wales (within the meaning of the Town and Country Planning Act 1990 (c. 8));
 - (h) a planning authority in Scotland;
 - (i) a district council in Northern Ireland;
 - (j) an authorised officer of any person mentioned in paragraphs (a) to (i) above.
- (2) Information shall not be disclosed under sub-paragraph (1) above except for the purpose of assisting a person falling within paragraphs (a) to (j) of that sub-paragraph in the performance of his duties.

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- (3) Notwithstanding any such obligation as is mentioned in sub-paragraph (1) above, any person mentioned in sub-paragraph (1)(a) to (j) above 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 aggregates 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 aggregates 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) above, 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.

Interpretation of Schedule

15 In this Schedule—

“authorised person” means any person acting under the authority of the Commissioners;

“connected activities”, in relation to the exploitation of aggregate in the United Kingdom, means any activities carried out—

- (a) for purposes connected with the carrying out of any such exploitation or with any transaction involving the carrying out of any such exploitation; or
- (b) for the purposes of, in connection with or in relation to the carrying on of any business involving any such exploitation.

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