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SCHEDULES

SCHEDULE 36

INFORMATION AND INSPECTION POWERS

Modifications etc. (not altering text)

- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **28(2)(3)**
- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **55(1)(2)**
- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **56**
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **33(2)(3)** (with reg. 1(4)(6))
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **60(1)(2)** (with reg. 1(4)(6))
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **61** (with reg. 1(4)(6))

PART 7

PENALTIES

Modifications etc. (not altering text)

- C1 Sch. 36 Pt. 7 applied (13.8.2009) by [2007 c. 11, Sch. 11 para. 2\(7\)](#) (as substituted by [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009](#) (S.I. 2009/2035), Sch. para. 53)

^{F1}... penalties [^{F2}for failure to comply or obstruction]

Textual Amendments

- F1 Word in Sch. 36 para. 39 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\), Sch. 47 para. 13\(3\)\(a\)](#)
- F2 Words in Sch. 36 para. 39 cross-heading inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 47 para. 13\(3\)\(b\)](#)

- 39 (1) This paragraph applies to a person who—
- (a) fails to comply with an information notice, or
 - (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the [^{F3}tribunal].

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- (2) [^{F4}The person] is liable to a penalty of £300.
- (3) The reference in this paragraph to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43.

Textual Amendments

- F3** Word in Sch. 36 para. 39(1)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(2)**
- F4** Words in Sch. 36 para. 39(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 13(2)**

Commencement Information

- I1** Sch. 36 para. 39 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

Daily default penalties

- 40 (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.
- (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

Commencement Information

- I2** Sch. 36 para. 40 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

^{F5}Penalties for inaccurate information and documents

Textual Amendments

- F5** Sch. 36 para. 40A and cross-heading inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 15**

- 40A (1) This paragraph applies if—
- (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
 - (b) condition A or B is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person—
- (a) discovers the inaccuracy some time later, and
 - (b) fails to take reasonable steps to inform HMRC.
- (5) The person is liable to a penalty not exceeding £3,000.

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- (6) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.]

Power to change amount of^{F6}... penalties

Textual Amendments

F6 Words in Sch. 36 para. 41 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(5\)](#)

- 41 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 39(2) [^{F7}, 40(2) and 40A(5)] such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1) [^{F8}, in relation to a specified sum,] “relevant date” means—
- (a) the date on which this Act is passed, and
 - (b) each date on which the power conferred by that sub-paragraph has been exercised [^{F9}; in relation to that sum].
- (3) Regulations under this paragraph do not apply to [^{F10}—
- (a)] any failure or obstruction which began before the date on which they come into force [^{F11}, or
 - (b) an inaccuracy in any information or document provided to HMRC before that date.]

Textual Amendments

F7 Words in Sch. 36 para. 41(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(2\)](#)
F8 Words in Sch. 36 para. 41(2) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(3\)\(a\)](#)
F9 Words in Sch. 36 para. 41(2)(b) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(3\)\(b\)](#)
F10 Word in Sch. 36 para. 41(3) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(4\)\(a\)](#)
F11 Sch. 36 para. 41(3)(b) and word inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 16\(4\)\(b\)](#)

Commencement Information

I3 Sch. 36 para. 41 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Concealing, destroying etc documents following information notice

- 42 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document that is the subject of an information notice addressed to the person (subject to sub-paragraphs (2) and (3)).
- (2) Sub-paragraph (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with the information notice, unless an officer of Revenue and Customs has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

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- (3) Sub-paragraph (1) does not apply, in a case to which paragraph 8(1) applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that paragraph unless, before the expiry of that period, an officer of Revenue and Customs made a request for the original document under paragraph 8(2)(b).

Commencement Information

I4 Sch. 36 para. 42 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Concealing, destroying etc documents following informal notification

- 43 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document if an officer of Revenue and Customs has informed the person that the document is, or is likely, to be the subject of an information notice addressed to that person (subject to sub-paragraph (2)).
- (2) Sub-paragraph (1) does not apply if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, so informed, or
 - (b) an information notice has been given to the person requiring the document to be produced.

Commencement Information

I5 Sch. 36 para. 43 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Failure to comply with time limit

- 44 A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 39 or 40 if the person did it within such further time, if any, as an officer of Revenue and Customs may have allowed.

Modifications etc. (not altering text)

C2 Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

I6 Sch. 36 para. 44 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Reasonable excuse

- 45 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or [^{F12}(on an appeal notified to the tribunal) the tribunal] that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.
- (2) For the purposes of this paragraph—

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- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
- (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
- (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

Textual Amendments

F12 Words in Sch. 36 para. 45(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(12)**

Modifications etc. (not altering text)

C2 Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 49 para. 5(3)** (with [Sch. 49 para. 1](#))

Commencement Information

I7 Sch. 36 para. 45 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

Assessment of^{F13} ... penalty

Textual Amendments

F13 Words in Sch. 36 para. 46 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 17(5)**

- 46 (1) Where a person becomes liable for a penalty under paragraph 39 [^{F14} 40 or 40A],
... —
^{F15}
- (a) [^{F16}HMRC may] assess the penalty, and
 - (b) [^{F17}if they do so, they must] notify the person.
- (2) An assessment of a penalty under paragraph 39 or 40 must be made [^{F18}within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to sub-paragraph (3)].
- [^{F19}(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the latest of the following—
- (a) the date on which the person became liable to the penalty,
 - (b) the end of the period in which notice of an appeal against the information notice could have been given, and
 - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 40A must be made—

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- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.]

Textual Amendments

- F14** Words in Sch. 36 para. 46(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(a\)](#)
- F15** Words in Sch. 36 para. 46(1) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(b\)](#)
- F16** Words in Sch. 36 para. 46(1)(a) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(c\)](#)
- F17** Words in Sch. 36 para. 46(1)(b) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(d\)](#)
- F18** Words in Sch. 36 para. 46(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(3\)](#)
- F19** Sch. 36 para. 46(3) (4) substituted for Sch. 36 para. 46(3) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(4\)](#)

Modifications etc. (not altering text)

- C2** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

- I8** Sch. 36 para. 46 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Right to appeal against ^{F20}... penalty

Textual Amendments

- F20** Words in Sch. 36 para. 47 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 18\(3\)](#)

- 47 A person may appeal ^{F21}... against any of the following decisions of an officer of Revenue and Customs—
- (a) a decision that a penalty is payable by that person under paragraph 39 [^{F22}, 40 or 40A], or
 - (b) a decision as to the amount of such a penalty.

Textual Amendments

- F21** Words in Sch. 36 para. 47 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 471\(13\)](#)
- F22** Words in Sch. 36 para. 47(a) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 18\(2\)](#)

Modifications etc. (not altering text)

- C2** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

- I9** Sch. 36 para. 47 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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Procedure on appeal against ^{F23} ... penalty

Textual Amendments

F23 Words in Sch. 36 para. 48 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 19](#)

- 48 (1) Notice of an appeal under paragraph 47 must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and
 - (c) to HMRC.
- (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.
- (3) On an appeal under paragraph 47(a) [^{F24}that is notified to the tribunal, the tribunal] may confirm or cancel the decision.
- (4) On an appeal under paragraph 47(b) [^{F24}that is notified to the tribunal, the tribunal] may—
- (a) confirm the decision, or
 - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this paragraph and paragraph 49, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Textual Amendments

F24 Words in Sch. 36 para. 48(3)(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 471\(14\)](#)

Modifications etc. (not altering text)

C2 Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

I10 Sch. 36 para. 48 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Enforcement of ^{F25} ... penalty

Textual Amendments

F25 Words in Sch. 36 para. 49 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 20\(4\)](#)

- 49 (1) A penalty under paragraph 39 [^{F26}, 40 or 40A] must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, or

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- (b) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

- (2) A penalty under paragraph 39 [F27, 40 or 40A] may be enforced as if it were income tax charged in an assessment and due and payable.

Textual Amendments

F26 Words in Sch. 36 para. 49(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 47 para. 20\(2\)](#)

F27 Words in Sch. 36 para. 49(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 47 para. 20\(3\)](#)

Modifications etc. (not altering text)

C2 Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

I11 Sch. 36 para. 49 in force at 1.4.2009 by [S.I. 2009/404, art. 2](#)

Tax-related penalty

- 50 (1) This paragraph applies where—
- (a) a person becomes liable to a penalty under paragraph 39,
 - (b) the failure or obstruction continues after a penalty is imposed under that paragraph,
 - (c) an officer of Revenue and Customs has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
 - (d) before the end of the period of 12 months beginning with the relevant date (within the meaning of paragraph 46), an officer of Revenue and Customs makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
 - (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.
- (2) The person is liable to a penalty of an amount decided by the Upper Tribunal.
- (3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
- (4) Where a person becomes liable to a penalty under this paragraph, HMRC must notify the person.
- (5) Any penalty under this paragraph is in addition to the penalty or penalties under paragraph 39 or 40.
- (6) In the application of the following provisions, no account shall be taken of a penalty under this paragraph—
- (a) section 97A of TMA 1970 (multiple penalties),
 - (b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and
 - (c) paragraph 15(1) of Schedule 41 (interaction with other penalties).

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Commencement Information

I12 Sch. 36 para. 50 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Enforcement of tax-related penalty

- 51 (1) A penalty under paragraph 50 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under paragraph 50 may be enforced as if it were income tax charged in an assessment and due and payable.

Commencement Information

I13 Sch. 36 para. 51 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Double jeopardy

- 52 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

Modifications etc. (not altering text)

C3 Sch. 36 para. 52 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

Commencement Information

I14 Sch. 36 para. 52 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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