

**Changes to legislation:** Employment Act 2002, SCHEDULE 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 1

Sections 11 and 12

#### PENALTIES: PROCEDURE AND APPEALS

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

- C1** Sch. 1 applied (with modifications) by 1992 c. 5, s. 113A(8)(9) (as inserted (6.4.2005) by [National Insurance Contributions and Statutory Payments Act 2004 \(c. 3\), ss. 9\(5\), 13; S.I. 2004/1943, art. 4\(c\)](#))
- C2** Sch. 1 applied (with modifications) by 1992 c. 5, s. 113B(4)(5) (as inserted (6.4.2005) by [National Insurance Contributions and Statutory Payments Act 2004 \(c. 3\), ss. 9\(5\), 13; S.I. 2004/1943, art. 4\(c\)](#))

##### *Determination of penalties by officer of Board*

- 1 (1) Subject to sub-paragraph (2) and except where proceedings have been instituted under paragraph 5, an officer of the Board authorised by the Board for the purposes of this paragraph may make a determination—
- imposing a penalty under section 11 or 12, and
  - setting it at such amount as, in his opinion, is correct or appropriate.
- (2) Sub-paragraph (1) does not apply to the imposition of such a penalty as is mentioned in section 11(2)(a).
- (3) Notice of a determination of a penalty under this paragraph shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this paragraph has been served the determination shall not be altered except in accordance with this paragraph or on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this paragraph that the amount of a penalty determined under this paragraph is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.

##### *Provisions supplementary to paragraph 1*

- 2 (1) A penalty determined under paragraph 1 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (2) Part 6 of the Taxes Management Act 1970 (c. 9) shall apply in relation to a penalty determined under paragraph 1 as if it were tax charged in an assessment and due and payable.

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### Appeals against penalty determinations

- 3 (1) An appeal may be brought against the determination of a penalty under paragraph 1.
- (2) The provisions of the Taxes Management Act 1970 relating to appeals, except section 50(6) to (8), shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax<sup>[F1]</sup> except that references to the tribunal shall be taken to be references to the First-tier Tribunal].
- (3) On an appeal by virtue of sub-paragraph (2) against the determination of a penalty under paragraph 1, the <sup>[F2]</sup>First-tier Tribunal] may—
- (a) if it appears <sup>F3</sup>... that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears <sup>F3</sup>... to be appropriate, confirm the determination;
  - (c) if the amount determined appears <sup>F4</sup>... to be excessive, reduce it to such other amount (including nil) as <sup>[F5]</sup>the tribunal considers] appropriate;
  - (d) if the amount determined appears <sup>F4</sup>... to be insufficient, increase it to such amount not exceeding the permitted maximum as <sup>[F5]</sup>the tribunal considers] appropriate.
- <sup>[F6]</sup>(4) In addition to any right of appeal on a point of law under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which had been determined under sub-paragraph (3), but not against any decision which falls under section 11(5)(d) or (e) of that Act and was made in connection with the determination of the amount of the penalty.
- (4A) Section 11(3) and (4) of the Tribunals, Courts and Enforcement Act 2007 applies to the right of appeal under sub-paragraph (4) as it applies to the right of appeal under section 11(2) of that Act.
- (4B) On an appeal under this paragraph the Upper Tribunal has the like jurisdiction as is conferred on the First-tier Tribunal by virtue of this paragraph.]

#### Textual Amendments

- F1** Words in Sch. 1 para. 3(2) inserted (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. 322(2)**
- F2** Words in Sch. 1 para. 3(3) 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. 322(3)(a)**
- F3** Words in Sch. 1 para. 3(3)(a)(b) 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. 322(3)(b)**
- F4** Words in Sch. 1 para. 3(3)(c)(d) 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. 322(3)(c)(i)**
- F5** Words in Sch. 1 para. 3(3)(c)(d) 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. 322(3)(c)(ii)**
- F6** Sch. 1 para. 3(4)-(4B) substituted for Sch. 1 para. 3(4) (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. 322(4)**

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### *Penalty proceedings before [F7First-tier Tribunal]*

- 4 (1) An officer of the Board authorised by the Board for the purposes of this paragraph may commence proceedings for any penalty to which sub-paragraph (1) of paragraph 1 does not apply by virtue of sub-paragraph (2) of that paragraph.

[F8(2) The person liable to the penalty shall be a party to the proceedings.]

- (3) Part 6 of the Taxes Management Act 1970 (c. 9) shall apply in relation to a penalty determined in proceedings under this paragraph as if it were tax charged in an assessment and due and payable.

[F9(4) In addition to any right of appeal on a point of law under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, the person liable to the penalty may appeal to the Upper Tribunal against the determination of a penalty in proceedings under sub-paragraph (1), but not against any decision which falls under section 11(5) (d) or (e) of that Act and was made in connection with the determination of the amount of the penalty.

(4A) Section 11(3) and (4) of the Tribunals, Courts and Enforcement Act 2007 applies to the right of appeal under sub-paragraph (4) as it applies to the right of appeal under section 11(2) of that Act.]

- (5) On any such appeal the [F10Upper Tribunal] may—
- (a) if it appears that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears to be appropriate, confirm the determination;
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the [F10Upper Tribunal] considers appropriate;
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the [F10Upper Tribunal] considers appropriate.

#### **Textual Amendments**

- F7** Words in Sch. 1 para. 4 heading 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. 323(2)**
- F8** Sch. 1 para. 4(2) 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. 323(3)**
- F9** Sch. 1 para. 4(4)(4A) substituted for Sch. 1 para. 4(4) (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. 323(4)**
- F10** Words in Sch. 1 para. 4(5) 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. 323(5)**

#### **Commencement Information**

- I1** Sch. 1 para. 4 in force at 6.4.2003 by S.I. 2002/2866, art. 2(2), **Sch. 1 Pt. 3** (with Sch. 3)

### *Penalty proceedings before court*

- 5 (1) Where in the opinion of the Board the liability of any person for a penalty under section 11 or 12 arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.

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- (2) Subject to sub-paragraph (3), proceedings under this paragraph shall be instituted—
- (a) in England and Wales, in the name of the Attorney General, and
  - (b) in Scotland, in the name of the Advocate General for Scotland.
- (3) Sub-paragraph (2) shall not prevent proceedings under this paragraph being instituted in England and Wales under the Crown Proceedings Act 1947 (c. 44) by and in the name of the Board as an authorised department for the purposes of that Act.
- (4) Any proceedings under this paragraph instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part 2 of the Crown Proceedings Act 1947.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.

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**Commencement Information**

**I2** Sch. 1 para. 5 in force at 6.4.2003 by S.I. 2002/2866, art. 2(2), Sch. 1 Pt. 3 (with Sch. 3)

*Mitigation of penalties*

- 6 The Board may in their discretion mitigate any penalty under section 11 or 12, or stay or compound any proceedings for a penalty, and may also, after judgment, further mitigate or entirely remit the penalty.

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**Commencement Information**

**I3** Sch. 1 para. 6 in force at 6.4.2003 by S.I. 2002/2866, art. 2(2), Sch. 1 Pt. 3 (with Sch. 3)

*Time limits for penalties*

- 7 A penalty under section 11 or 12 may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the [F11tribunal] or the court, at any time within six years after the date on which the penalty was incurred or began to be incurred.

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**Textual Amendments**

**F11** Word in Sch. 1 para. 7 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. 324

*Interest on penalties*

- 8 (1) After paragraph (p) of section 178(2) of the Finance Act 1989 (c. 26) (setting rates of interest) there shall be inserted—
- “(q) paragraph 8 of Schedule 1 to the Employment Act 2002.”

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- (2) A penalty under section 11 or 12 shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which it becomes due and payable until payment.

*Interpretation*

- 9 In this Schedule—  
“the Board” means the Commissioners of Inland Revenue;  
F12 .....

**Textual Amendments**

- F12** Words in Sch. 1 para. 9 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. 325](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7(3)(e) and word inserted by [2023 c. 20 Sch. para. 36\(4\)\(c\)](#)
- s. 15(2)(bb) word omitted by [2023 c. 20 Sch. para. 43\(a\)](#)
- s. 15(2)(bc) inserted by [2023 c. 20 Sch. para. 43\(b\)](#)