

## SCHEDULES

### SCHEDULE 16

Section 155

#### PENALTIES

##### *Meaning of “penalty”*

- 1 In this Schedule, “penalty” means a penalty imposed by a penalty notice.

##### *Notice of intent to impose penalty*

- 2 (1) Before giving a person a penalty notice, the Commissioner must, by written notice (a “notice of intent”) inform the person that the Commissioner intends to give a penalty notice.
- (2) The Commissioner may not give a penalty notice to a person in reliance on a notice of intent after the end of the period of 6 months beginning when the notice of intent is given, subject to sub-paragraph (3).
- (3) The period for giving a penalty notice to a person may be extended by agreement between the Commissioner and the person.

##### *Contents of notice of intent*

- 3 (1) A notice of intent must contain the following information—
- (a) the name and address of the person to whom the Commissioner proposes to give a penalty notice;
  - (b) the reasons why the Commissioner proposes to give a penalty notice (see sub-paragraph (2));
  - (c) an indication of the amount of the penalty the Commissioner proposes to impose, including any aggravating or mitigating factors that the Commissioner proposes to take into account.
- (2) The information required under sub-paragraph (1)(b) includes—
- (a) a description of the circumstances of the failure, and
  - (b) where the notice is given in respect of a failure described in section 149(2), the nature of the personal data involved in the failure.
- (3) A notice of intent must also—
- (a) state that the person may make written representations about the Commissioner’s intention to give a penalty notice, and
  - (b) specify the period within which such representations may be made.
- (4) The period specified for making written representations must be a period of not less than 21 days beginning when the notice of intent is given.

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*Status: This is the original version (as it was originally enacted).*

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- (5) If the Commissioner considers that it is appropriate for the person to have an opportunity to make oral representations about the Commissioner’s intention to give a penalty notice, the notice of intent must also—
- (a) state that the person may make such representations, and
  - (b) specify the arrangements for making such representations and the time at which, or the period within which, they may be made.

#### *Giving a penalty notice*

- 4 (1) The Commissioner may not give a penalty notice before a time, or before the end of a period, specified in the notice of intent for making oral or written representations.
- (2) When deciding whether to give a penalty notice to a person and determining the amount of the penalty, the Commissioner must consider any oral or written representations made by the person in accordance with the notice of intent.

#### *Contents of penalty notice*

- 5 (1) A penalty notice must contain the following information—
- (a) the name and address of the person to whom it is addressed;
  - (b) details of the notice of intent given to the person;
  - (c) whether the Commissioner received oral or written representations in accordance with the notice of intent;
  - (d) the reasons why the Commissioner proposes to impose the penalty (see sub-paragraph (2));
  - (e) the reasons for the amount of the penalty, including any aggravating or mitigating factors that the Commissioner has taken into account;
  - (f) details of how the penalty is to be paid;
  - (g) details of the rights of appeal under section 162;
  - (h) details of the Commissioner’s enforcement powers under this Schedule.
- (2) The information required under sub-paragraph (1)(d) includes—
- (a) a description of the circumstances of the failure, and
  - (b) where the notice is given in respect of a failure described in section 149(2), the nature of the personal data involved in the failure.

#### *Period for payment of penalty*

- 6 (1) A penalty must be paid to the Commissioner within the period specified in the penalty notice.
- (2) The period specified must be a period of not less than 28 days beginning when the penalty notice is given.

#### *Variation of penalty*

- 7 (1) The Commissioner may vary a penalty notice by giving written notice (a “penalty variation notice”) to the person to whom it was given.
- (2) A penalty variation notice must specify—
- (a) the penalty notice concerned, and

(b) how it is varied.

(3) A penalty variation notice may not—

- (a) reduce the period for payment of the penalty;
- (b) increase the amount of the penalty;
- (c) otherwise vary the penalty notice to the detriment of the person to whom it was given.

(4) If—

- (a) a penalty variation notice reduces the amount of the penalty, and
- (b) when that notice is given, an amount has already been paid that exceeds the amount of the reduced penalty,

the Commissioner must repay the excess.

#### *Cancellation of penalty*

8 (1) The Commissioner may cancel a penalty notice by giving written notice to the person to whom it was given.

(2) If a penalty notice is cancelled, the Commissioner—

- (a) may not take any further action under section 155 or this Schedule in relation to the failure to which that notice relates, and
- (b) must repay any amount that has been paid in accordance with that notice.

#### *Enforcement of payment*

9 (1) The Commissioner must not take action to recover a penalty unless—

- (a) the period specified in accordance with paragraph 6 has ended,
- (b) any appeals against the penalty notice have been decided or otherwise ended,
- (c) if the penalty notice has been varied, any appeals against the penalty variation notice have been decided or otherwise ended, and
- (d) the period for the person to whom the penalty notice was given to appeal against the penalty, and any variation of it, has ended.

(2) In England and Wales, a penalty is recoverable—

- (a) if the county court so orders, as if it were payable under an order of that court;
- (b) if the High Court so orders, as if it were payable under an order of that court.

(3) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland, a penalty is recoverable—

- (a) if a county court so orders, as if it were payable under an order of that court;
- (b) if the High Court so orders, as if it were payable under an order of that court.