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# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

#### CHAPTER I

#### GENERAL

#### *Rates of duty*

#### **1 Wine, made-wine and cider.**

- (1) For the Table of rates of duty in Schedule 1 to the <sup>M1</sup>Alcoholic Liquor Duties Act 1979 (wine and made-wine) there shall be substituted the Table in Schedule 1 to this Act.
- (2) In section 62(1) of that Act (cider) for “£22.39” there shall be substituted “ £22.82 ”.
- (3) This section shall be deemed to have come into force on 1st January 1994.

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#### **Marginal Citations**

**M1** 1979 c. 4.

#### **2 Tobacco products.**

- (1) For the Table in Schedule 1 to the <sup>M2</sup>Tobacco Products Duty Act 1979 there shall be substituted—

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“ TABLE

1. Cigarettes	An amount equal to 20 per cent. of the retail price plus £52.33 per thousand cigarettes.
2. Cigars	£77.58 per kilogram.
3. Hand-rolling tobacco	£81.86 per kilogram.
4. Other smoking tobacco and chewing tobacco	£34.26 per kilogram.”

(2) This section shall be deemed to have come into force at 6 o’clock in the evening of 30th November 1993.

**Marginal Citations**

M2 1979 c. 7.

**3 Hydrocarbon oil.**

(1) In section 6(1) of the <sup>M3</sup>Hydrocarbon Oil Duties Act 1979 for “£0.3058” (duty on light oil) and “£0.2514” (duty on heavy oil) there shall be substituted “ £0.3314 ” and “ £0.2770 ” respectively.

(2) In section 11(1) of that Act (rebate on heavy oil) for “£0.0105” (fuel oil) and “£0.0149” (gas oil) there shall be substituted “ £0.0116 ” and “ £0.0164 ” respectively.

(3) In section 14(1) of that Act (rebate on light oil for use as furnace fuel) for “£0.0105” there shall be substituted “ £0.0116 ”.

(4) This section shall be deemed to have come into force at 6 o’clock in the evening of 30th November 1993.

**Marginal Citations**

M3 1979 c. 5.

<sup>F1</sup>4 .....

**Textual Amendments**

F1 S. 4 repealed (1.9.1994) by 1994 c. 22, s. 65, Sch. 5 Pt. I (with s. 57(4))

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### *Other provisions*

#### **5 Vehicles excise duty: miscellaneous provisions.**

Schedule 2 to this Act (which contains miscellaneous provisions relating to vehicles excise duty) shall have effect.

#### **6 Gaming machine licence duty.**

Schedule 3 to this Act (which makes amendments to the <sup>M4</sup>Betting and Gaming Duties Act 1981 about gaming machine licence duty) shall have effect.

#### **Marginal Citations**

**M4** 1981 c. 63.

## **CHAPTER II**

### **APPEALS AND PENALTIES**

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

**C1** Pt. 1 Chapter 2 (ss. 7-19) applied (17.3.2000) by [S.I. 2000/426](#), **art. 5**

### *VAT and duties tribunals*

#### **7 VAT and duties tribunals.**

<sup>F2</sup>(1) .....

<sup>F2</sup>(2) .....

(3) In the following provisions of this Chapter references to an appeal tribunal are references to a VAT and duties tribunal.

(4) Sections [<sup>F3</sup>85 and 87 of the Value Added Tax Act 1994] (settling of appeals by agreement and enforcement of decisions of tribunal) shall have effect as if—

(a) the references to section [<sup>F4</sup>83 of that Act] included references to this Chapter; and

(b) references to value added tax included references to any relevant duty.

(5) Without prejudice to the generality of the power conferred by paragraph 9 of Schedule [<sup>F5</sup>12 to the Value Added Tax Act 1994] (rules of procedure for tribunals), rules under that paragraph may provide for costs awarded against an appellant on an appeal by virtue of this Chapter to be recoverable, and for any directly applicable Community legislation relating to any relevant duty or any enactment so relating to apply, as if the amount awarded were an amount of duty which the appellant is required to pay.

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- (6) In Part I of Schedule 1 to the <sup>M5</sup>Tribunals and Inquiries Act 1992 (tribunals under direct supervision of Council on Tribunals), for the entry beginning “Value added tax” there shall be substituted the following entry—

“VAT and duties	44. VAT and duties tribunals for England and Wales and for Northern Ireland, constituted in accordance with Schedule 8 to the Value Added Tax Act 1983 (c. 55).”
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- (7) In Part II of Schedule 1 to that Act of 1992 (tribunals under supervision of Scottish Committee of the Council), for the entry beginning “Value added tax” there shall be substituted the following entry—

“VAT and duties	63. VAT and duties tribunals for Scotland constituted in accordance with Schedule 8 to the Value Added Tax Act 1983 (c. 55).”
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#### Textual Amendments

- F2** S. 7(1)(2) repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(2), **Sch. 15**
- F3** S. 7(4): Words substituted for “25 and 29 of the Finance Act 1985” (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by virtue of 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)**
- F4** Words in s. 7(4)(a) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)** (as *retrospectively* amended by 1995 c. 4, s. 33(5))
- F5** Words in s. 7(5) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(b)**

#### Commencement Information

- I1** S. 7 wholly in force at 31.8.1994; s. 7 not in force at Royal Assent see s. 19(1); s. 7 (except s. 7(1)(b)) in force at 1.7.1994 by **S.I. 1994/1690, art. 2**; s. 7(1)(b) in force at 31.8.1994 by **S.I. 1994/2143, art. 2**

#### Marginal Citations

- M5** 1992 c. 53.

### *Civil penalties*

## 8 Penalty for evasion of excise duty.

- (1) Subject to the following provisions of this section, in any case where—
- (a) any person engages in any conduct for the purpose of evading any duty of excise, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.
- (2) References in this section to a person’s evading a duty of excise shall include references to his obtaining or securing, without his being entitled to it—

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- (a) any repayment, rebate or drawback of duty;
  - (b) any relief or exemption from or any allowance against duty; or
  - (c) any deferral or other postponement of his liability to pay any duty or of the discharge by payment of any such liability,
- and shall also include references to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.
- (3) In relation to any such evasion of duty as is mentioned in subsection (2) above, the reference in subsection (1) above to the amount of duty evaded or sought to be evaded shall be construed as a reference to the amount of the repayment, rebate, drawback, relief, exemption or allowance or, as the case may be, the amount of the payment which, or the liability to make which, is deferred or otherwise postponed.
- (4) Where a person is liable to a penalty under this section—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
  - (b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners.
- (5) Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say—
- (a) the insufficiency of the funds available to any person for paying any duty of excise 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 duty.
- (6) Statements made or documents produced by or on behalf of a person shall not be inadmissible in—
- (a) any criminal proceedings against that person in respect of any offence in connection with or in relation to any duty of excise, or
  - (b) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any duty of excise,
- by reason only that any of the matters specified in subsection (7) below has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (7) The matters mentioned in subsection (6) above are—
- (a) that the Commissioners have power, in relation to any duty of excise, to assess an amount due by way of a civil penalty, instead of instituting criminal proceedings;
  - (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such an assessment in any case, to be influenced in determining whether to make such an assessment by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
  - (c) that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under this section, as provided in subsection (4) above; and

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- (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.
- (8) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.

#### **Commencement Information**

**I2** S. 8 wholly in force at 1.1.1995; s. 8 not in force at Royal Assent see s. 19(1); s. 8 in force for certain purposes at 1.11.1994 by [S.I. 1994/2679, art. 2, Sch.](#); s. 8 in force at 1.1.1995 insofar as not already in force by [S.I. 1994/2679, art. 3](#)

## **9 Penalties for contraventions of statutory requirements.**

- (1) This section applies, subject to section 10 below, to any conduct in relation to which any enactment (including an enactment contained in this Act or in any Act passed after this Act) provides for the conduct to attract a penalty under this section.
- (2) Any person to whose conduct this section applies shall be liable—
- (a) in the case of conduct in relation to which provision is made by subsection (4) below or any other enactment for the penalty attracted to be calculated by reference to an amount of, or an amount payable on account of, any duty of excise, to a penalty of whichever is the greater of 5 per cent. of that amount and £250; and
  - (b) in any other case, to a penalty of £250.
- (3) Subject to section 13(3) and (4) below, in the case of any conduct to which this section applies which is conduct in relation to which provision is made by subsection (4) or (5) below or any other enactment for that conduct to attract daily penalties, the person whose conduct it is—
- (a) shall be liable, in addition to an initial penalty under subsection (2) above, to a penalty of £20 for every day, after the first, on which the conduct continues, but
  - (b) shall not, in respect of the continuation of that conduct, be liable to further penalties under subsection (2) above.
- (4) Where any conduct to which this section applies consists in a failure, in contravention of any subordinate legislation, to pay any amount of any duty of excise or an amount payable on account of any such duty, then, in so far as that would not otherwise be the case—
- (a) the penalty attracted to that contravention shall be calculated by reference to the amount unpaid; and
  - (b) the contravention shall also attract daily penalties.
- (5) Where—
- (a) a contravention of any provision made by or under any enactment consists in or involves a failure, before such time as may be specified in or determined in accordance with that provision, to send a return to the Commissioners showing the amount which any person is or may become required to pay by way of, or on account of, any duty of excise, and

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- (b) that contravention attracts a penalty under this section,  
that contravention shall also attract daily penalties.
- (6) Where, by reason of any conduct to which this section applies, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.
- (7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for any sum for the time being specified in subsection (2) or (3) above such other sum as appears to them to be justified by the change.
- (8) The power to make an order under subsection (7) above—
- (a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons; but
- (b) shall not be exercisable so as to vary the penalty for any conduct occurring before the coming into force of the order.
- (9) Schedule 4 to this Act (which provides for the conduct to which this section applies, repeals the summary offences superseded by this section and makes related provision with respect to forfeiture) shall have effect.

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

- C2** S. 9 applied (29.4.1996 with effect as mentioned in 1996 c. 8, s. 6(5)) by 1979 c. 5, s. 20AAB(8) (as inserted by 1996 c. 8, s. 6(3)(5)); S.I. 1996/2751, art. 2  
S. 9 applied (29.4.1996 with effect as mentioned in 1996 c. 8, s. 5(6)) by 1979 c. 5, s. 13AB(1)(b)(2)(b)(5) (as inserted by 1996 c. 8, s. 5(4)(6)); S.I. 1996/2314, art. 2
- C3** S. 9 applied (1.1.1995) by 1979 c. 2, ss. 92(6)(8), 93(6), 100J, 101(4), 107(2)(3), 108(4), 111(1), 114(2), 115(4), 116(3), 118G, 170A(1)(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 2(1)(2), 3, 4, 5(b), 6(1)(2), 7, 8(1), 9, 10(1)(b), 11, 12, 13(1)(2)); S.I. 1994/2679, art. 3  
S. 9 applied (1.1.1995) by 1979 c. 4, ss. 8(2), 10(2), 13(3)(5), 15(4)(5)(7), 16(2)(3), 18(6), 19(2), 20(1)(2), 21(3), 22(9), 24(4), 33(1)(5), 34(2), 35(3), 41A(8), 44(2), 46(2), 47(4)(5), 49(3), 54(5), 55(6), 55A(3), 56(2), 59(2), 61(2), 62(4)(6), 64(2), 67(2), 69(3)(4), 71(1)(3), 75(5), 77(3)(4), 78(4), 82(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 15, 16, 17(1)(a)(3), 18(1)(2)(3), 19(1)(2), 20, 21(1), 22, 23(1), 24, 25, 26(1)(2), 27, 28, 29, 30, 31, 32(1)(2), 33, 34, 35, 36(b), 37, 38, 39, 40(1)(2), 41, 42, 43(1)(2), 44(1)(2), 45(b), 46(1)(2), 47, 48); S.I. 1994/2679, art. 3  
S. 9 applied (1.1.1995) by 1979 c. 5, ss. 10(3)(4), 13(1)(2), 14(4)(5), 18(5), 20AA(4)(a), 21(3), 22(1), 23(1), 24(4) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 50(1)(b)(2)(c), 51(1)(b)(2)(c), 52(1)(b)(2)(c), 53, 54, 55(b), 56(1)(b), 57(1)(b), 58(b)); S.I. 1994/2679, art. 3  
S. 9 applied (1.1.1995) by 1979 c. 7, s. 7(2) (as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 para. 59); S.I. 1994/2679, art. 3  
S. 9 applied (1.1.1995) by 1981 c. 63, s. 24(5), Sch. 1 paras. 13(1), 14(3), Sch. 2 para. 7(1), Sch. 3 para. 16(3)(b), Sch. 4 para. 16(1) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 61(a), 62(1)(2)(b), 63(1), 64(1), 65(1)); S.I. 1994/2679, art. 3  
S. 9 applied (1.1.1995) by 1993 c. 34, ss. 27(4), 28(3), 29(8) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 67(b), 68(b)); S.I. 1994/2679, art. 3  
S. 9 applied (19.3.1997) by 1997 c. 16, ss. 12(5)(a), 13(1), 15, 50(1), Sch. 1 paras. 5(3), 7, 10(3), Sch. 5 para. 4(1)

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### Commencement Information

- I3** S. 9 wholly in force at 1.1.1995; s. 9 not in force at Royal Assent see s. 19(1); s. 9(1)–(8) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 9 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

## 10 Exceptions to liability under section 9.

- (1) Subject to subsection (2) below and to any express provision to the contrary made in relation to any conduct to which section 9 above applies, such conduct shall not give rise to any liability to a penalty under that section if the person whose conduct it is satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct.
- (2) Where it appears to the Commissioners or, on appeal, an appeal tribunal that there is no reasonable excuse for a continuation of conduct for which there was at first a reasonable excuse, liability for a penalty under section 9 above shall be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation.
- (3) For the purposes of this section—
  - (a) an insufficiency of funds available for paying any duty or penalty due shall not be a reasonable excuse; and
  - (b) where reliance is placed by any person on another to perform any task, then neither the fact of that reliance nor the fact that any conduct to which section 9 above applies was attributable to the conduct of that other person shall be a reasonable excuse.

### Modifications etc. (not altering text)

- C4** S. 10 excluded (1.1.1995) by 1979 c. 2, ss. 114(2), 170A(2) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 9, 13(2) (with s. 19(3)); S.I. 1994/2679, art. 3  
 S. 10 excluded (1.1.1995) by 1979 c. 5, ss. 22(1A), 23(1A) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 56(2), 57(2) (with s. 19(3)); S.I. 1994/2679, art. 3

### Commencement Information

- I4** S. 10 wholly in force at 1.1.1995; s. 10 not in force at Royal Assent see s. 19(1); s. 10 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 10 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

## 11 Breaches of walking possession agreements.

- (1) This section applies where—
  - (a) [<sup>F6</sup>in accordance with regulations under section 51 of the Finance Act 1997 (enforcement by distress)], a person (“the person levying the distress”) is empowered or authorised to distrain any property of another person (“the person in default”) [<sup>F7</sup>who has refused or neglected to pay any amount of relevant duty or any amount recoverable as if it were an amount of relevant duty due from him]; and
  - (b) the person levying the distress and the person in default have entered into a walking possession agreement.



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- (2) In this section a “walking possession agreement” means 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
  - (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 subsection (4) below, 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 unpaid duty or penalty which gives rise to the distraint.
- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

#### Textual Amendments

- F6** Words in s. 11(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(2)(a)(9); S.I. 1997/1432, art. 2
- F7** Words in s. 11(1)(a) inserted (1.7.1997) by 1997 c. 16, s. 53(2)(b)(9); S.I. 1997/1432, art. 2

#### Commencement Information

- I5** S. 11 wholly in force at 1.1.1995; s. 11 not in force at Royal Assent see s. 19(1); s. 11 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 11 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

### *Assessments to excise duty or to penalties*

## 12 Assessments to excise duty.

- (1) Subject to subsection (4) below, where it appears to the Commissioners—
  - (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
  - (b) that there has been a default falling within subsection (2) below,the Commissioners may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.
- [<sup>F8</sup>(1A) Subject to subsection (4) below, where it appears to the Commissioners—
  - (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
  - (b) that the amount due can be ascertained by the Commissioners,the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.]
- (2) The defaults falling within this subsection are—
  - (a) any failure by any person to make, keep, preserve or produce as required or directed by or under any enactment any returns, accounts, books, records or other documents;

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- (b) any omission from or inaccuracy in any returns, accounts, books, records or other documents which any person is required or directed by or under any enactment to make, keep, preserve or produce;
  - (c) any failure by any person to take or permit to be taken any step which he is required under Schedule 1 or 3 to the <sup>M6</sup>Betting and Gaming Duties Act 1981 [<sup>F9</sup>or Schedule 1 to the Finance Act 1997] to take or to permit to be taken;
  - (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.
- (3) Where an amount has been assessed as due from any person and notified in accordance with this section, it shall, subject to any appeal under section 16 below, be deemed to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (5) below, the end of the period of [<sup>F10</sup>three years] beginning with the time when his liability to the duty arose; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;
- but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.
- (5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [<sup>F10</sup>three years] were a reference to twenty years in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by—
- (a) conduct in respect of which any person (whether or not the person assessed)—
    - (i) has become liable to a penalty under section 8 above, or
    - (ii) has been convicted of an offence of fraud or dishonesty; or
  - (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Management Act.
- (6) The reference in subsection (4) above to the time when a person's liability to a duty of excise arose are references—
- (a) in the case of a duty of excise on goods, to the excise duty point; and
  - (b) in any other case, to the time when the duty was charged.
- (7) In this section references to an offence of fraud or dishonesty include references to an offence under any of the following provisions, that is to say—
- (a) sections 100(3), 136(1), 159(6), 167(1), 168(1), 170(1) and (2) and 170B(1) of the Management Act,
  - (b) section 24(6) of the <sup>M7</sup>Betting and Gaming Duties Act 1981 and paragraph 13(3) of Schedule 1, <sup>F11</sup>. . . and paragraph 16(1) of Schedule 3 to that Act,
  - (c) section 31(1) and (3) of the <sup>M8</sup>Finance Act 1993, and

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- (d) section 41(1) and (3) below,  
and also include references to attempting or conspiring to commit an offence of fraud or dishonesty and to inciting the commission of such an offence.
- (8) In this section “representative”, in relation to a person appearing to the Commissioners to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative [<sup>F12</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

- F8** S. 12(1A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 7, 12; S.I. 1998/2243, **art. 2**
- F9** Words in s. 12(2)(c) inserted (19.3.1997) by 1997 c. 16, ss. 13, 15, **Sch. 2 para. 7**
- F10** Words in s. 12(4)(a)(5) substituted (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 para. 6(2)(a)**
- F11** Words in s. 12(7)(b) repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. II Note 2 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. II** Note 2
- F12** Words in s. 12(8) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, **art. 2**

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

- C5** S. 12 modified (19.3.1997) by 1997 c. 16, **ss. 12(6)(a), 15**
- C6** S. 12(1) extended (29.4.1996 with effect as mentioned in 1996 c. 8, **s. 6(5)**) by 1979 c. 5, **s. 20AAB(5)** (as inserted by 1996 c. 8, **s. 6(3)(5)**); S.I. 1996/2751, **art. 2**

#### Commencement Information

- I6** S. 12 wholly in force at 1.1.1995; s. 12 not in force at Royal Assent see s. 19(1); s. 12 (except s. 12(7)(b)(c) and specified references in s. 12(7)(a)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2, Sch.**; s. 12 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

#### Marginal Citations

- M6** 1981 c. 63.  
**M7** 1981 c. 63.  
**M8** 1993 c. 34.

### [<sup>F13</sup>12A Other assessments relating to excise duty matters.

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—
- has been given but ought not to have been given, or
  - would not have been given had the facts been known or been as they later turn out to be.
- (2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.
- (3) Where an amount has been assessed as due from any person under—
- subsection (2) above,
  - section 94 or 96 of the Management Act, <sup>F14</sup> . . .

*Status: Point in time view as at 01/10/1998.*

*Changes to legislation: Finance Act 1994, Part I is up to date with all changes known to be in force on or before 17 June 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)*

- [ section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,]  
<sup>F15</sup>(bb)
- (c) section 10, 13, [<sup>F16</sup>13AB,] 14, 23 or 24 of the <sup>M9</sup>Hydrocarbon Oil Duties Act 1979,
- [ section 8 of the Tobacco Products Duty Act 1979, or  
<sup>F17</sup>(d)
- (e) section 2 of the Finance (No. 2) Act 1992,]  
 and notice has been given accordingly, that amount shall, subject to any appeal under section 16 below, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) No assessment under any of the provisions referred to in subsection (3) above, or under section 61 or 167 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (6) below, the end of the period of three years beginning with the relevant time; and
- (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.
- (5) Subsection (4) above shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.
- (6) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of, conduct falling within subsection (5)(a) or (b) of section 12 above (construed in accordance with subsection (7) of that section).]

#### Textual Amendments

- F13** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, art. 2
- F14** Word at the end of s. 12A(3)(b) repealed (1.10.1998) by 1998 c. 36, ss. 20, 165, Sch. 2 paras. 8(2), 12, Sch. 27 Pt. I(5), Note; S.I. 1998/2243, art. 2
- F15** S. 12A(3)(bb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 8(2), 12; S.I. 1998/2243, art. 2
- F16** Word in s. 12A(3)(c) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 8(3), 12; S.I. 1998/2243, art. 2
- F17** S. 12A(3)(d)(e) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 8(3), 12; S.I. 1998/2243, art. 2

#### Marginal Citations

- M9** 1979 c. 5.

#### <sup>F18</sup>12B Section 12A: supplementary provisions.

- (1) For the purposes of section 12A above and this section, relevant excise duty relief has been given if (and only if)—

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- (a) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- (b) an amount of excise duty has been repaid to a person;
- (c) an amount by way of drawback of excise duty has been paid to a person;
- (d) an allowance of excise duty in any amount has been made to a person;
- (e) an amount by way of rebate has been allowed to a person;
- (f) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- (g) an amount has been paid to a person under section 20(3) of the Hydrocarbon Oil Duties Act 1979 (payments in respect of contaminated or accidentally mixed oil); or
- (h) an amount of relief has been allowed to a person by virtue of section 20AA of that Act (power to allow reliefs), or in accordance with paragraph 10 of Schedule 3 to that Act (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores);

and the amount of the relief is the amount mentioned in relation to the relief in this subsection.

(2) For the purposes of section 12A above the relevant time is—

- (a) in the case of an assessment under section 61 of the Management Act, the time when the ship or aircraft in question returned to a place within the United Kingdom;
- (b) in the case of an assessment under section 94 of that Act, the time at which the goods in question were warehoused;
- (c) in the case of an assessment under that section as it has effect by virtue of section 95 of that Act, the time when the goods in question were lawfully taken from the warehouse;
- (d) in the case of an assessment under section 96 of that Act, the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line;
- (e) in the case of an assessment under section 167 of that Act—
  - (i) if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made; and
  - (ii) if the assessment relates to an overpayment, the time when the overpayment was made;
- <sup>[F19]</sup>(ea) in the case of an assessment under section 8 or 10 of the Alcoholic Liquor Duties Act 1979, the time of delivery from warehouse;
- (eb) in the case of an assessment under section 11 of that Act, the time when the direction was made;]
- (f) in the case of an assessment under section 10, 13, <sup>[F20]</sup>13AB,] 14 or 23 of the <sup>M10</sup>Hydrocarbon Oil Duties Act 1979, the time of the action which gave rise to the power to assess;
- (g) in the case of an assessment under section 24(4A) or (4B) of that Act, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
- <sup>[F21]</sup>(ga) in the case of an assessment under section 8 of the Tobacco Products Duty Act 1979, the time when the Commissioners are satisfied of a failure to prove as mentioned in subsection (2)(a) or (b) of that section;

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- (gb) in the case of an assessment under section 2 of the Finance (No. 2) Act 1992, the time when the sums were paid or credited in respect of the drawback;]
  - (h) in the case of an assessment under section 12A(2) above, the time when the relevant excise duty relief in question was given.
- (3) In section 12A above “the liable person” means—
- (a) in the case of excise duty which has been remitted or repaid under section 130 of the Management Act on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse;
  - (b) in the case of a rebate which has been allowed on any oil under section 11 of the Hydrocarbon Oil Duties Act 1979, the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use;
  - (c) in the case of a rebate allowed on any petrol under section 13A of that Act, the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use;
  - (d) in any other case, the person mentioned in subsection (1) above to whom the relief in question was given.

- (4) In section 12A above—

“excepted relief” means any relief which is given by the making of a repayment on a claim made under section 137A of the Management Act;

“representative”, in relation to any person from whom the Commissioners assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him.

#### Textual Amendments

- F18** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, **art. 2**
- F19** S. 12B(2)(ea)(eb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(2), **12**; S.I. 1998/2243, **art. 2**
- F20** Word in s. 12B(2)(f) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(3), **12**; S.I. 1998/2243, **art. 2**
- F21** S. 12B(2)(ga)(gb) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 9(4), **12**; S.I. 1998/2243, **art. 2**

#### Marginal Citations

- M10** 1979 c. 5.

### 13 Assessments to penalties.

- (1) Where any person is liable to a penalty under this Chapter, the Commissioners may assess the amount due by way of penalty and notify that person, or his representative, accordingly.
- (2) An assessment under this section may be combined with an assessment under section 12 above, but any notification for the purposes of any such combined assessment shall separately identify any amount assessed by way of a penalty.

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- (3) In the case of any amount due from any person by way of a penalty under section 9 above for conduct consisting in a contravention which attracts daily penalties—
- (a) a notification of an assessment under this section shall specify a date, being a date no later than the date of the notification, to which the penalty as assessed is to be calculated; and
  - (b) if the contravention continues after that date, a further assessment, or (subject to this subsection) further assessments, may be made under this section in respect of any continuation of the contravention after that date.
- (4) If—
- (a) a person is assessed to a penalty in accordance with paragraph (a) of subsection (3) above, and
  - (b) the contravention to which that penalty relates is remedied within such period after the date specified for the purposes of that subsection in the notification of assessment as may for the purposes of this subsection be notified to that person by the Commissioners,
- that contravention shall be treated for the purposes of this Chapter as having been remedied, and accordingly the conduct shall be deemed to have ceased, immediately before that date.
- (5) If an amount has been assessed as due from any person and notified in accordance with this section, then unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount shall, subject to any appeal under section 16 below, be recoverable as if it were an amount due from that person as an amount of the appropriate duty.
- (6) In subsection (5) above “the appropriate duty” means—
- (a) the [<sup>F22</sup>relevant duty] (if any) by reference to an amount of which the penalty in question is calculated; or
  - (b) where there is no such duty, the [<sup>F22</sup>relevant duty] the provisions relating to which are contravened by the conduct giving rise to the penalty or, if those provisions relate to more than one duty, such of the duties as appear to the Commissioners and are certified by them to be relevant in the case in question.
- (7) In this section “representative”, in relation to a person liable to a penalty under this Chapter, means his personal representative [<sup>F23</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

**F22** Words in s. 13(6)(a)(b) substituted (1.7.1997) by 1997 c. 16, s. 53(3)(9); S.I. 1997/1432, art. 2

**F23** Words in s. 13(7) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, art. 2

#### Commencement Information

**I7** S. 13 wholly in force at 1.1.1995; s. 13 not in force at Royal Assent see s. 19(1); s. 13 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 13 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

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### *Customs and excise reviews and appeals*

#### **14 Requirement for review of a decision.**

- (1) This section applies to the following decisions, not being decisions under this section or section 15 below, that is to say—
- (a) any decision by the Commissioners, in relation to any customs duty or to any agricultural levy of the European Community, as to—
    - (i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
    - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
    - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
    - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled;
  - (b) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under section 12 above;
  - <sup>F24</sup>(ba) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act <sup>F25</sup>, section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,] section 10, 13, <sup>F26</sup>13AB,] 14, 23 or 24 of the <sup>M11</sup>Hydrocarbon Oil Duties Act 1979, <sup>F27</sup>section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No. 2) Act 1992,] or as to the amount of duty to which a person is to be assessed under any of those provisions;]
  - <sup>F28</sup>(bb) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;]
  - (c) so much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above; and
  - (d) any decision by the Commissioners or any officer which is of a description specified in Schedule 5 to this Act.
- (2) Any person who is—
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
  - (b) a person in relation to whom, or on whose application, such a decision has been made, or
  - (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
- may by notice in writing to the Commissioners require them to review that decision.
- (3) The Commissioners shall not be required under this section 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 the assessment containing the decision, was first given to the person requiring the review.



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- (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- requests such a notification;
  - has not previously been given written notification of that decision; and
  - if given such a notification, will be entitled to require a review of the decision under this section.
- (5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- 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
  - 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) If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of—
- the Community Customs Code,
  - any Community legislation made for the purpose of implementing that Code, or
  - any enactment or subordinate legislation so made,
- which are not decisions to which this section otherwise applies, the Commissioners may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1) above.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—
- to provide, in relation to any description of decisions to which this section is applied by any such regulations, that section 16(4) below shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and
  - to make such other incidental, supplemental, consequential and transitional provision as the Commissioners think fit.

#### Textual Amendments

- F24** S. 14(1)(ba) inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(2), 7; S.I. 1997/1305, **art. 2**
- F25** Words in s. 14(1)(ba) substituted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(a), **12**; S.I. 1998/2243, **art. 2**
- F26** Word in s. 14(1)(ba) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(b), **12**; S.I. 1998/2243, **art. 2**
- F27** Words in s. 14(1)(ba) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 10(c), **12**; S.I. 1998/2243, **art. 2**
- F28** S. 14(1)(bb) inserted (1.5.1995 with effect as mentioned in s. 20(5) of the amending Act) by 1995 c. 4, s. 20(4)(5); S.I. 1995/2892, **art. 2**

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

- C7** S. 14 applied (1.10.1995) by S.I. 1995/2351, **reg. 2**

*Status: Point in time view as at 01/10/1998.*

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S. 14 applied (1.5.1995 with effect as mentioned in 1995 c. 4, s. 14(2)) by 1981 c. 63, **Sch. 4 para. 7A(5)** (as inserted by 1995 c. 4, s. 14, **Sch. 3 para. 11(5)**)  
S. 14 applied (1.6.1995) by S.I. 1995/1046, **reg. 7(3)**  
S. 14 applied (*prosp.*) by 1995 c. 4, s. 5(4)(6)  
S. 14 applied (19.3.1997) by 1997 c. 16, ss. 11(7), 13(1), 15, 50(1), Sch. 1 paras. 8(11), 9(5), **Sch. 5 para. 19(1)**  
S. 14 applied (24.3.1997) by S.I. 1997/534, **regs. 3(1), 5(1)**

#### Commencement Information

**I8** S. 14 wholly in force at 1.1.1995; s. 14 not in force at Royal Assent see s. 19(1); s. 14(1)(2)-(5) (except s. 14(1)(a)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2, Sch.**; s. 14 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

#### Marginal Citations

**M11** 1979 c. 5.

## 15 Review procedure.

- (1) Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either—
  - (a) confirm the decision; or
  - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.
- (2) Where—
  - (a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 above 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 that person of their determination on the review,
 they shall be assumed for the purposes of this Chapter to have confirmed the decision.
- (3) The Commissioners shall not by virtue of any requirement under this Chapter to review a decision have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

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

**C8** S. 15 applied (1.6.1995) by S.I. 1995/1046, **reg. 7(3)**  
S. 15 applied (1.5.1995 with effect as mentioned in 1995 c. 4, s. 14(2)) by 1981 c. 63, **Sch. 4 para. 7A(5)** (as inserted by 1995 c. 4, s. 14, **Sch. 3 para. 11(5)**)  
S. 15 applied (*prosp.*) by 1995 c. 4, s. 5(4)(6)  
S. 15 applied (19.3.1997) by 1997 c. 16, ss. 11(7), 13(1), 15, 50(1), Sch. 1 paras. 8(11), 9(5), **Sch. 5 para. 19(1)**

#### Commencement Information

**I9** S. 15 wholly in force at 1.1.1995; s. 15 not in force at Royal Assent see s. 19(1); s. 15 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2, Sch.**; s. 15 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

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*Status: Point in time view as at 01/10/1998.*

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## 16 Appeals to a tribunal.

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions, that is to say—
    - (a) any decision by the Commissioners on a review under section 15 above (including a deemed confirmation under subsection (2) of that section); and
    - (b) any decision by the Commissioners on such review of a decision to which section 14 above applies as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 14(3) above.
  - (2) An appeal under this section shall not be entertained unless the appellant is the person who required the review in question.
  - (3) An appeal which relates to, or to any decision on a review of, any decision falling within any of paragraphs (a) to (c) of section 14(1) above shall not be entertained if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any relevant duty to the Commissioners (including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners) unless—
    - (a) the Commissioners have, on the application of the appellant, issued a certificate stating either—
      - (i) that such security as appears to them to be adequate has been given to them for the payment of that amount; or
      - (ii) that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;
    - or
    - (b) the tribunal to which the appeal is made decide that the Commissioners should not have refused to issue a certificate under paragraph (a) above and are satisfied that such security (if any) as it would have been reasonable for the Commissioners to accept in the circumstances has been given to the Commissioners.
- [<sup>F29</sup>(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.]
- (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—
    - (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;
    - (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
    - (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

*Status: Point in time view as at 01/10/1998.*

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- (5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.
- (6) On an appeal under this section the burden of proof as to—
- (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
  - (b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and
  - (c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the <sup>M12</sup>Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),
- shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.
- (7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.
- (8) [<sup>F30</sup>Subject to subsection (9) below] references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 14(1)(a) to (c) above.
- [<sup>F31</sup>(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in paragraph 9(e) of Schedule 5 to this Act.
- (10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.]

#### Textual Amendments

- F29** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, 12; S.I. 1998/2243, art. 2
- F30** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)
- F31** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)

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

- C9** S. 16 applied (1.6.1995) by S.I. 1995/1046, reg. 7(3)  
S. 16 applied (1.5.1995 with effect as mentioned in 1995 c. 4, s. 14(2)) by 1981 c. 63, Sch. 4 para. 7A(5) (as inserted by 1995 c. 4, s. 14, Sch. 3 para. 11(5))  
S. 16 applied (*prosp.*) by 1995 c. 4, s. 5(4)(6)  
S. 16 applied (19.3.1997) by 1997 c. 16, ss. 11(7), 13(1), 15, 50(1), Sch. 1 paras. 8(11), 9(5), Sch. 5 para. 19(1)
- C10** S. 16(4) modified (1.10.1995) by S.I. 1995/2351, reg. 3  
S. 16(4) modified (24.3.1997) by S.I. 1997/534, regs. 4, 6

#### Commencement Information

- I10** S. 16 wholly in force at 1.1.1995; s. 16 not in force at Royal Assent see s. 19(1); s. 16 (except s. 16(6)(a)(b)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 16 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

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### Marginal Citations

**M12** 1979 c. 5.

## *Supplemental provisions*

### 17 Interpretation.

- (1) Subject to the following provisions of this section, expressions used in this Chapter and in the Management Act have the same meanings in this Chapter as in that Act.
- (2) In this Chapter—
  - “appeal tribunal” shall be construed in accordance with section 7(3) above;
  - “conduct” includes any act, omission or statement;
  - “contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;
  - “the Community Customs Code” means the Regulation of the Council of the European Communities dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;
  - “the Management Act” means the <sup>M13</sup>Customs and Excise Management Act 1979;
  - “relevant duty” means any Community customs duty or agricultural levy of the European Community or any duty of excise; and
  - “subordinate legislation” has the same meaning as in the <sup>M14</sup>Interpretation Act 1978.
- (3) For the purposes of this Chapter a contravention consisting in a failure to do something at or before a particular time shall be taken to continue after that time until the thing is done, and references in this Chapter to the remedying of such a contravention shall be construed accordingly.
- (4) References in this Chapter to a duty of excise do not include references to [<sup>F32</sup>vehicle] excise duty.

### Textual Amendments

**F32** Word in s. 17(4) substituted (1.9.1994 subject to transitional provisions in Sch. 4 of the amending Act) by 1994 c. 22, ss. 63, 66(1), Sch. 3 para. 32 (with s. 57(4))

### Commencement Information

**I11** S. 17 wholly in force at 1.1.1995; s. 17 not in force at Royal Assent see s. 19(1); s. 17 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 17 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

### Marginal Citations

**M13** 1979 c. 2.

**M14** 1978 c. 30.

*Status: Point in time view as at 01/10/1998.*

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## 18 Consequential modifications of enactments.

- (1) Subject to subsection (2) below, references in the Management Act to a penalty shall not include references to a penalty under this Chapter.
- (2) Section 117 of the Management Act (execution and distress against revenue traders) shall have effect—
  - (a) as if any amount assessed as due from any person by way of a penalty under this Chapter<sup>F33</sup> . . . were an amount of excise duty payable by that person;<sup>F34</sup> . . .
  - <sup>F34</sup>(b) . . . . .
- (3) Section 127 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect;<sup>F35</sup> . . .
- <sup>F36</sup>(4) . . . . .
- (5) In section 29A(1)(d) of that Act of 1981 (certificate to be evidence of certain matters), for the words “or estimate made in pursuance of this Act” there shall be substituted “made in pursuance of this Act or in any assessment made under section 12 of the Finance Act 1994”.
- (6) In section 35(1)(c) of the<sup>M15</sup> Finance Act 1993 (certificate to be evidence of certain matters), for the words “in an estimate made under section 116A of the Customs and Excise Management Act 1979” there shall be substituted “in any assessment made under section 12 of the Finance Act 1994”.
- (7) In section 827 of the Taxes Act 1988 (VAT penalties etc.), after subsection (1) there shall be inserted the following subsection—
 

“(1A) Where a person is liable to make a payment by way of a penalty under any of sections 8 to 11 of the Finance Act 1994 (penalties relating to excise), that payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”
- (8) Subsections (1) [<sup>F37</sup>and (2)] above shall be without prejudice to section 13(5) above; and subsection (7) above shall have effect in relation to any chargeable period ending after the coming into force of the provision which provides for the imposition of the penalty in question.

### Textual Amendments

- F33** Words in s. 18(2)(a) repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F34** S. 18(2)(b) and the preceding word “and” repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F35** Words in s. 18(3) repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(2), **Sch. 15**
- F36** S. 18(4) repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F37** Words in s. 18(8) substituted (1.7.1997) by 1997 c. 16, s. 53(4)(9); S.I. 1997/1432, **art. 2**

### Commencement Information

- I12** S. 18 wholly in force at 1.1.1995; s. 18 not in force at Royal Assent see s. 19(1); s. 18(1)(2)(7)(8) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2**, **Sch.**; s. 18 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

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#### Marginal Citations

**M15** 1993 c. 34.

### 19 Commencement of Chapter.

- (1) Subject to section 18(8) above, this Chapter shall come into force on such day as the Commissioners may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different provisions and for different purposes.
- (2) An order under this section may make such transitional provision and savings as appear to the Commissioners to be appropriate in connection with the bringing into force by such an order of any provision of this Chapter.
- (3) Nothing in any provision of this Chapter shall, in respect of conduct occurring before the coming into force of that provision, impose or affect any liability to any civil or criminal penalty or any liability of goods to forfeiture.

#### Subordinate Legislation Made

**P1** S. 19 power partly exercised: 1.7.1994 appointed for specified provisions by S.I. 1994/1690, **art. 2**  
S. 19 power partly exercised: 31.8.1994 appointed for specified provision by S.I. 1994/2143, **art. 2**  
S. 19 power partly exercised: different dates appointed for specified provisions by S.I. 1994/2679, **arts. 2, 3**

#### Commencement Information

**I13** S. 19 wholly in force at 1.1.1995; s. 19 not in force at Royal Assent see s. 19(1); s. 19 in force at 1.1.1995 by S.I. 1994/2679, **art. 3**

## CHAPTER III

### CUSTOMS: ENFORCEMENT POWERS

### 20 Interpretation, etc.

- (1) This Chapter applies to any person carrying on a trade or business which consists of or includes any of the following activities—
  - (a) importing or exporting any goods of a class or description subject to a duty of customs (whether or not in fact chargeable with that duty);
  - (b) producing, manufacturing or applying a process to them;
  - (c) buying, selling or dealing in them;
  - (d) handling or storing them;
  - (e) financing or facilitating any activity mentioned in paragraphs (a) to (d) above.
- (2) In subsection (1) above “duty of customs” includes any agricultural levy of the European Community.
- (3) In this Chapter—
  - (a) “customs goods” means any goods mentioned in paragraph (a) of subsection (1) above; and



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- (b) any reference to the business of a person to whom this Chapter applies is a reference to the trade or business carried on by him as mentioned in that subsection.
- (4) This Chapter shall have effect and be construed as if it were contained in the <sup>M16</sup>Customs and Excise Management Act 1979.
- (5) In consequence of the provision made by sections 21 to 27 below, any power under—
  - (a) section 75A, 75B or 75C of the Customs and Excise Management Act 1979 to require a person importing or exporting goods to keep or preserve records, or
  - (b) section 77A, 77B or 77C of that Act to require a person to furnish information or produce documents relating to imported or exported goods,
 shall cease to be exercisable in relation to a person to the extent that the goods in question are customs goods.

**Marginal Citations**

M16 1979 c. 2.

**21 Requirements about keeping records.**

- (1) The Commissioners may by regulations require any person to whom this Chapter applies—
  - (a) to keep such records as may be prescribed in the regulations; and
  - (b) to preserve those records—
    - (i) for such period not exceeding four years as may be prescribed in the regulations, or
    - (ii) for such lesser period as the Commissioners may require.
- (2) The Commissioners may also require any person mentioned in subsection (3) below—
  - (a) to keep such records as they may specify; and
  - (b) to preserve those records for such period not exceeding four years as they may require.
- (3) The person referred to is any person who—
  - (a) is not carrying on a trade or business which consists of or includes the importation or exportation of customs goods, but
  - (b) is concerned in some other capacity in such importation or exportation.
- (4) A duty imposed under subsection (1)(b) or (2)(b) above to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.
- (5) On giving approval under subsection (4) above, the Commissioners may 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) Regulations under this section may—
  - (a) make different provision for different cases; and
  - (b) be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.



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- (7) Any person who fails to comply with a requirement imposed by virtue of this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

## 22 Records and rules of evidence.

- (1) Where any information is preserved by approved means as mentioned in section 21(4) above, a copy of any document in which it is contained shall, subject to subsection (2) below, 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 subsection (1) above be admissible in evidence—
- <sup>F38</sup>(a) . . . . .
- (b) in criminal proceedings in England and Wales, except in accordance with sections 69 and 70 of the <sup>M17</sup>Police and Criminal Evidence Act 1984 and Part II of the <sup>M18</sup>Criminal Justice Act 1988;
- (c) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M19</sup>Civil Evidence (Scotland) Act 1988;
- (d) in criminal proceedings in Scotland, except in accordance with [<sup>F39</sup>Schedule 8 to the Criminal Procedure (Scotland) Act 1995];
- (e) in civil proceedings in Northern Ireland, except in accordance with sections 2 and 3 of the <sup>M20</sup>Civil Evidence Act (Northern Ireland) 1971; and
- (f) in criminal proceedings in Northern Ireland, except in accordance with Article 68 of the <sup>M21</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 and Part II of the <sup>M22</sup>Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

### Textual Amendments

**F38** S. 22(2)(a) repealed (31.1.1997) by 1995 c. 38, s. 15(2), **Sch. 2**; S.I. 1996/3217, **art. 2**

**F39** Words in s. 22(2) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 89(2)**

### Marginal Citations

**M17** 1984 c. 60.

**M18** 1988 c. 33.

**M19** 1988 c. 32.

**M20** 1971 c. 36 (N.I.).

**M21** S.I. 1989/1341 (N.I. 12).

**M22** S.I. 1988/1847 (N.I. 17).

## 23 Furnishing of information and production of documents.

- (1) Every person to whom this Chapter applies shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to his business as they may reasonably specify.
- (2) Every person to whom this Chapter applies shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer—

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- (a) at that person's principal place of business or at such other place as the officer may reasonably require, and
  - (b) at such time as the officer may reasonably require,  
any documents which relate to his business.
- (3) Where it appears to an officer that any documents which relate to a business of a person to whom this Chapter applies are in the possession of another person, the officer may require that other person, at such time and place as the officer may reasonably require, to produce those documents or cause them to be produced.
- (4) For the purposes of this section, the documents which relate to a business of a person to whom this Chapter applies shall be taken to include—
- (a) any profit and loss account and balance sheet, and
  - (b) any documents required to be kept by virtue of section 21(1) above.
- (5) Every person mentioned in section 21(3) above shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to the importation or exportation of customs goods in which he is concerned as they may reasonably specify.
- (6) Every person mentioned in section 21(3) above shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer at such time and place as the officer may reasonably require, any documents which relate to the importation or exportation of customs goods in which he is concerned.
- (7) An officer may take copies of, or make extracts from, any document produced under this section.
- (8) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under this section.
- (9) Where a document is removed under subsection (8) above—
- (a) if the person from whom the document is removed so requests, he shall be given a record of what was removed;
  - (b) if the document is reasonably required for the proper conduct of any business, the person by whom the document was produced or caused to be produced shall be provided as soon as practicable with a copy of the document free of charge;
  - (c) if the document is lost or damaged, the Commissioners shall be liable to compensate the owner of it for any expenses reasonably incurred by him in replacing or repairing it.
- (10) If a person claims a lien on any document produced by him under subsection (3) or (6) above—
- (a) the production of the document shall be without prejudice to the lien; and
  - (b) the removal of the document under subsection (8) above shall not be regarded as breaking the lien.
- (11) Any person who fails to comply with a requirement imposed under this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

## **24 Power of entry.**

Where an officer has reasonable cause to believe that—

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- (a) any premises are used in connection with a business of a person to whom this Chapter applies, and
  - (b) any customs goods are on those premises,
- he may at any reasonable time enter and inspect those premises and inspect any goods found on them.

## 25 Order for production of documents.

- (1) Where, on an application by an officer, a justice is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with a duty of customs is being, has been or is about to be committed, and
  - (b) that any information or documents 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 section.
- (2) An order under this section is an order that the person who appears to the justice to be in possession of the information or documents to which the application relates shall—
- (a) furnish an officer with the information or produce the document,
  - (b) permit an officer to take copies of or make extracts of any document produced, and
  - (c) permit an officer to remove any document 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) In this section “justice” means a justice of the peace or, in relation to Scotland, a justice within the meaning of [F40 section 308 of the Criminal Procedure (Scotland) Act 1995].

### Textual Amendments

**F40** Words in s. 25(3) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 89(3)

## 26 Procedure when documents are removed.

- (1) An officer who removes any document in the exercise of a power conferred under section 25 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 officer shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to subsection (7) below, if a request for permission to be granted access to any document which—
- (a) has been removed by an officer, and
  - (b) is retained by the Commissioners for the purposes of investigating an offence,

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is made to the officer in charge of the investigation by a person who had custody or control of the document 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 officer.

- (4) Subject to subsection (7) below, if a request for a photograph or copy of any such document is made to the officer in charge of the investigation by a person who had custody or control of the document 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 officer for the purpose of photographing it or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Where any document is photographed or copied under subsection (4)(b) above, the photograph or copy shall 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 section to grant access to, or to supply a photograph or copy of, any document if the officer in 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 document was removed; or
  - (c) any criminal proceedings which may be brought as a result of—
    - (i) the investigation of which he is in charge; or
    - (ii) any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this section to the officer in charge of the investigation is a reference to the person whose name and address are endorsed on the order concerned as being the officer in charge of it.

## 27 Failure of officer to comply with requirements under section 26.

- (1) Where, on an application made as mentioned in subsection (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by section 26 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 subsection (1) above shall be made—
  - (a) in the case of a failure to comply with any of the requirements imposed by subsections (1) and (2) of section 26 above, by the occupier of the premises from which the document in question was removed or by the person who had custody or control of it immediately before it was so removed, and
  - (b) in any other case, by the person who has such custody or control.
- (3) In this section “the appropriate judicial authority” means—
  - (a) in England and Wales, a magistrates’ court;
  - (b) in Scotland, the sheriff; and
  - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2) (a) of the <sup>M23</sup>Magistrates’ Courts (Northern Ireland) Order 1981.

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- (4) Any application for an order under this section—
- (a) in England and Wales, shall be made by way of complaint; or
  - (b) in Northern Ireland, shall be made by way of civil proceedings upon complaint.
- (5) Sections 21 and 42(2) of the <sup>M24</sup>Interpretation Act (Northern Ireland) 1954 (rules and orders regulating procedure of courts etc and assignment of business to particular courts) shall apply as if any reference in those provisions to any enactment included a reference to this section.

**Marginal Citations**

**M23** S.I. 1981/1675 (N.I. 26).

**M24** 1954 c. 33 (N.I.).

**CHAPTER IV**

**AIR PASSENGER DUTY**

*The duty*

**28 Air passenger duty.**

- (1) A duty to be known as air passenger duty shall be charged in accordance with this Chapter on the carriage on a chargeable aircraft of any chargeable passenger.
- (2) Subject to the provisions of this Chapter about accounting and payment, the duty in respect of any carriage on an aircraft of a chargeable passenger—
- (a) becomes due when the aircraft first takes off on the passenger's flight, and
  - (b) shall be paid by the operator of the aircraft.
- (3) Subject to section 29 below, every aircraft designed or adapted to carry persons in addition to the flight crew is a chargeable aircraft for the purposes of this Chapter.
- (4) Subject to sections 31 and 32 below, every passenger on an aircraft is a chargeable passenger for the purposes of this Chapter if his flight begins at an airport in the United Kingdom.
- (5) In this Chapter, "flight", in relation to any person, means his carriage on an aircraft; and for the purposes of this Chapter, a person's flight is to be treated as beginning when he first boards the aircraft and ending when he finally disembarks from the aircraft.

**29 Chargeable aircraft.**

- (1) Where—
- (a) the authorised take-off weight in respect of an aircraft is less than ten tonnes, or
  - (b) an aircraft is not authorised to seat twenty or more persons (excluding members of the flight crew and cabin attendants),
- the aircraft is not a chargeable aircraft for the purposes of this Chapter.

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- (2) In this section “take-off weight”, in relation to an aircraft, means the total weight of the aircraft and its contents when taking off; and for the purposes of this section the authorised take-off weight of an aircraft is less than ten tonnes if—
- (a) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum authorised take-off weight (assuming the most favourable circumstances for take-off) is less than ten tonnes, or
  - (b) the Commissioners are satisfied that the aircraft is not designed or adapted to take off when its take-off weight is ten tonnes or more (assuming the most favourable circumstances for take-off) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.
- (3) For the purposes of this section an aircraft is not authorised as mentioned in subsection (1)(b) above if—
- (a) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft (excluding members of the flight crew and cabin attendants) is less than twenty, or
  - (b) the Commissioners are satisfied that the aircraft is not designed or adapted to seat twenty or more persons (excluding members of the flight crew and cabin attendants) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.
- (4) In this section “certificate of airworthiness” has the same meaning as in the Air Navigation Order.

### **30 The rate of duty.**

- (1) Air passenger duty shall be charged on the carriage of each chargeable passenger at the rate appropriate for the place where the passenger’s journey ends.
- [<sup>F41</sup>(2) The rate is [<sup>F42</sup>£10] if that place is in the area specified in subsection (3) below and in—
- (a) the United Kingdom or another EEA State, or
  - (b) any territory for whose external relations the United Kingdom or another member State is responsible.]
- (3) The area referred to in subsection (2) above is the area bounded by the meridians of longitude 32° W and 32° E and the parallels of latitude 26° N and 81° N.
- (4) In any other case, the rate is [<sup>F43</sup>£20].
- (5) Subject to subsection (6) below, the journey of a passenger whose agreement for carriage is evidenced by a ticket ends for the purposes of this section at his final place of destination.
- (6) Where in the case of such a passenger—
- (a) his journey includes two or more flights, and
  - (b) any of those flights is not followed by a connected flight,
- his journey ends for those purposes where the first flight not followed by a connected flight ends.
- (7) The journey of any passenger whose agreement for carriage is not evidenced by a ticket ends for those purposes where his flight ends.

*Status: Point in time view as at 01/10/1998.*

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(8) For the purposes of this Chapter, successive flights are connected if (and only if) they are treated under an order as connected.

[<sup>F44</sup>(9) In this section “EEA State” means a State which is a Contracting Party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein; and “EEA Agreement” here means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.]

#### Textual Amendments

**F41** S. 30(2) substituted (*retrospectively*) by 1995 c. 4, s. 15(1)(2)

**F42** Words in s. 30(2) substituted (19.3.1997 with application as mentioned in s. 9(3) of the amending Act) by 1997 c. 16, s. 9(1)

**F43** Words in s. 30(4) substituted (19.3.1997 with application as mentioned in s. 9(3) of the amending Act) by 1997 c. 16, s. 9(2)

**F44** S. 30(9) inserted (*retrospectively*) by 1995 c. 4, s. 15(1)(3)

### 31 Passengers: exceptions.

(1) Where in the case of a passenger whose agreement for carriage is evidenced by a return ticket—

- (a) he is a chargeable passenger in relation to a flight on his outward journey, and
- (b) his final place of destination in relation to that journey is in the United Kingdom,

he is not a chargeable passenger in relation to a flight on his return journey.

(2) Subsection (1) above does not apply if—

- (a) either his outward journey or his return journey includes two or more flights, and
- (b) in relation to any of those flights (other than the first) on the journey in question, he would (apart from that subsection) be a chargeable passenger.

(3) A passenger whose agreement for carriage is evidenced by a ticket is not a chargeable passenger in relation to a flight which is the second or a subsequent flight on his journey if—

- (a) the prescribed particulars of the flight are shown on the ticket, and
- (b) that flight and the previous flight are connected.

(4) A child who—

- (a) has not attained the age of two years, and
- (b) is not allocated a separate seat before he first boards the aircraft,

is not a chargeable passenger.

[<sup>F45</sup>(4A) A passenger is not a chargeable passenger in relation to a flight if under his agreement for carriage (whether or not it is evidenced by a ticket)—

- (a) the flight is to depart from and return to the same airport, and
- (b) the duration of the flight (excluding any period during which the aircraft’s doors are open for boarding or disembarkation) is not to exceed 60 minutes.]

(5) A passenger not carried for reward is not a chargeable passenger if he is carried—

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- (a) in pursuance of any requirement imposed under any enactment, or
  - (b) for the purpose only of inspecting matters relating to the aircraft or the flight crew.
- (6) Regulations may provide for subsection (1) above to have effect as if the reference in paragraph (a) to a person who is a chargeable passenger in relation to a flight on his outward journey included a person whose outward journey began at an airport in the Isle of Man.

#### Textual Amendments

**F45** S. 31(4A) inserted (29.4.1996) by 1996 c. 8, s. 13(1)

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

**C11** S. 31(1) modified (1.8.1994) by S.I. 1994/1738, reg. 13(1)

### 32 Change of circumstances after ticket issued etc.

- (1) [<sup>F46</sup>Subsections (2) and (3) below apply] in the case of a person whose agreement for carriage is evidenced by a ticket.

(2) Where—

- (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would not (assuming there is no change of circumstances) be a chargeable passenger in relation to any flight in the course of his journey, and
- (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of that journey on a flight the prescribed particulars of which were not shown on his ticket at that time,

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.

(3) Where—

- (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would (assuming there is no change of circumstances) be a chargeable passenger in relation to one or more flights (“the proposed chargeable flights”) in the course of his journey,
- (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of that journey on a flight the prescribed particulars of which were not shown on his ticket at that time, and
- (c) but for this subsection he would by reason of the change be a chargeable passenger in relation to a number of flights exceeding the number of the proposed chargeable flights,

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.

[<sup>F47</sup>(4) Where—

- (a) at the time a passenger’s flight begins, by virtue of section 31(4A) above he would not (assuming there is no change of circumstances) be a chargeable passenger in relation to the flight, and



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- (b) by reason only of a change of circumstances not attributable to any act or default of his, the flight does not return to the airport from which it departed or exceeds 60 minutes in duration (excluding any period during which the aircraft's doors are open for boarding or disembarkation),  
he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.]

#### Textual Amendments

- F46** Words in s. 32(1) substituted (29.4.1996) by 1996 c. 8, s. 13(2)(a)  
**F47** S. 32(4) added (29.4.1996) by 1996 c. 8, s. 13(2)(b)

#### *Persons liable for the duty*

### **33 Registration of aircraft operators.**

- (1) The Commissioners shall under this section keep a register of aircraft operators.
- (2) The operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of any chargeable passengers.
- (3) A person who has become liable to be registered under this section ceases to be so liable if the Commissioners are satisfied at any time—
  - (a) that he no longer operates any chargeable aircraft, or
  - (b) that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers.
- (4) A person who is not registered and has not given notice under this subsection shall, if he becomes liable to be registered at any time, give written notice of that fact to the Commissioners not later than the end of the prescribed period beginning with that time.
- (5) Notice under subsection (4) above shall be in such form, be given in such manner and contain such information as the Commissioners may direct.
- (6) If a person who is required to give notice under subsection (4) above fails to do so, his failure shall attract a penalty under section 9 above which, if any amount of duty is then due from him and unpaid, shall be calculated by reference to that amount.
- (7) Regulations may make provision as to the information to be included in, and the correction of, the register kept under this section.
- (8) In particular, the regulations may provide—
  - (a) for the inclusion in the register of persons who have not given notice under this section but appear to the Commissioners to be liable to be registered,
  - (b) for persons who are liable to be registered—
    - (i) not to be included in, or
    - (ii) to be removed from,the register in prescribed circumstances,
  - (c) for the removal from the register of persons who have ceased to be so liable, and
  - (d) for the time from which an entry in the register is to be effective (which may be earlier than the time when the entry is first made in the register).

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### 34 Fiscal representatives.

- (1) An aircraft operator who—
  - (a) is or is liable to be registered, and
  - (b) does not meet the requirements of subsection (3) below,
 is required to have a fiscal representative.
- (2) In this Chapter “fiscal representative”, in relation to an aircraft operator, means a person who meets those requirements and stands appointed by the operator for the purposes of this section.
- (3) A person meets the requirements of this subsection if—
  - (a) he has any business establishment or other fixed establishment in the United Kingdom, or
  - (b) if he is an individual, he has his usual place of residence in the United Kingdom.
- (4) Where any person is appointed under this section to be the fiscal representative of any aircraft operator (in this section referred to as his “principal”), then, subject to subsection (5) below [<sup>F48</sup>and section 34A], the fiscal representative—
  - (a) shall be entitled to act on his principal’s behalf for any of the purposes of the enactments relating to duty,
  - (b) shall, subject to such provisions as may be made by regulations, secure (where appropriate by acting on his principal’s behalf) his principal’s compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of those enactments, and
  - (c) shall be personally liable in respect of any failure of his principal to comply with or discharge any such obligation or liability as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the fiscal representative and his principal.
- (5) A fiscal representative shall not be liable by virtue of subsection (4) above himself to be registered under section 33 above, but regulations may—
  - (a) require the names of fiscal representatives to be shown in such manner as may be prescribed against the names of their principals in the register kept under that section, and
  - (b) make it the duty of a fiscal representative, for the purposes of registration, to notify the Commissioners, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect.

#### Textual Amendments

**F48** Words in s. 34(4) inserted (31.7.1998) by 1998 c. 36, s. 15(2)

### [<sup>F49</sup>34A Administrative representatives.

- (1) Subject to the following provisions of this section, where—
  - (a) the appointment of any person to be the fiscal representative of an aircraft operator contains a statement that the appointment is made for administrative purposes only,

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- (b) the operator has complied with any obligations for the provision of security imposed, in relation to appointments containing such statements, by any general directions given by the Commissioners, and
  - (c) the operator is not for the time being in contravention of any requirement to provide any security that he is required to provide under section 36 below, that appointment shall have effect in accordance with subsection (2) below.
- (2) Where the appointment of any person as a fiscal representative has effect in accordance with this subsection section 34(4)(b) and (c) above shall be taken, in the case of that person—
  - (a) not to impose any requirement on the representative to secure the payment of amounts of duty which are or may become due from his principal, and
  - (b) not to make him personally liable either to pay any such amounts or in respect of any failure by his principal to pay them.
- (3) The security that may be required by general directions given by the Commissioners for the purposes of this section is any such security for the payment of amounts of duty which are or may become due from the person providing the security as may be determined in accordance with the directions.
- (4) The power of the Commissioners under section 36 below to require the provision of security shall not include any power to require a fiscal representative of an aircraft operator whose appointment has effect in accordance with subsection (2) above to provide any security for the payment of amounts of duty which are or may become due from his principal.
- (5) In this section references to an amount of duty include references to any penalty or interest that is recoverable as if it were an amount of duty, but only in so far as the penalty or interest is in respect of a failure by an aircraft operator to pay an amount of duty, or to pay such an amount before a certain time.]

#### Textual Amendments

**F49** S. 34A inserted (31.7.1998) by 1998 c. 36, s. 15(1)

### 35 Fiscal representatives: supplementary.

- (1) Regulations may make provision about—
  - (a) the manner in which a person is to be appointed as a fiscal representative, and
  - (b) the circumstances in which a person is to be treated as having ceased to be a fiscal representative.
- (2) If any aircraft operator who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, his failure shall attract a penalty under section 9 above.
- (3) Any failure of a fiscal representative to give any notice which he is required to give by regulations under section 34(5)(b) above shall attract a penalty under section 9 above.

### 36 Security for payment of duty.

- (1) The Commissioners may require—

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- (a) any operator of an aircraft who is or is liable to be registered, or
  - (b) any fiscal representative,
- to provide such security, or further security, as they may think appropriate for the payment of any duty which is or may become due from the operator.
- (2) Any failure by a person to provide any security which he is required by the Commissioners to provide under subsection (1) above shall attract a penalty under section 9 above.
- (3) For the purposes of this section, a person shall not be treated as having been required to provide security under subsection (1) above unless the Commissioners have either—
- (a) served notice of the requirement on him, or
  - (b) taken all such other steps as appear to them to be reasonable for bringing the requirement to his attention.

### **37 Handling agents.**

- (1) Where any amount of duty becomes payable at any time by the operator of an aircraft and, within the period of ninety days beginning with that time, that amount, or any other amount which becomes payable by him within the period, is not paid, the Commissioners may give notice under this section to any handling agent of his.
- (2) If any operator of an aircraft who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, the Commissioners may give notice under this section to any handling agent of his.
- (3) In this Chapter “handling agent”, in relation to the operator of an aircraft (“the principal”), means any person (other than an individual) who, under an agreement with the principal, makes arrangements for—
- (a) the allocation of seats to passengers on aircraft operated by the principal, or
  - (b) the supervision of the boarding of such aircraft by passengers.
- (4) A notice under this section—
- (a) may be given on the ground referred to in subsection (1) above only if the Commissioners consider it necessary to do so for the protection of the revenue, and
  - (b) may at any time be withdrawn by the Commissioners.
- (5) A notice under this section shall become effective on the date stated in it or, if later, the time when the notice is received by the handling agent and shall continue to be effective until withdrawn.
- (6) If, where a notice given to a handling agent under this section is effective—
- (a) the allocation of seats to passengers on aircraft operated by his principal, or the supervision of the boarding of such aircraft by passengers, is carried out in pursuance of arrangements made by him under any agreement with his principal, and
  - (b) any duty payable in respect of those passengers is not paid,
- the handling agent shall be liable jointly and severally with his principal for the payment of the duty.

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### **38 Accounting for and payment of duty.**

- (1) Regulations shall require aircraft operators who are registered or liable to be registered—
  - (a) to keep accounts for the purposes of duty in such form and manner as may be prescribed, and
  - (b) to make returns in respect of duty—
    - (i) by reference to such periods as may be prescribed or as may be allowed by the Commissioners, in relation to a particular operator, in accordance with regulations, and
    - (ii) at such time and in such manner as may be prescribed or specified.
- (2) Any person from whom any duty is due shall pay the duty at such time and in such manner as may be prescribed or specified.
- (3) In this section “specified” means specified in a notice published, and not withdrawn, by the Commissioners.
- (4) Any failure by any person to comply with regulations under this section shall, unless he is complying with the corresponding provisions of such a notice, attract a penalty under section 9 above and, in the case of any failure to keep accounts, daily penalties.

### **39 Schemes for simplifying operation of reliefs etc.**

- (1) If in the opinion of the Commissioners it is expedient to do so in the light of difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, they may in accordance with the provisions of this section prepare a scheme for the registered operator.
- (2) Any scheme so prepared shall specify the period for which it is to have effect.

[<sup>F50</sup>(2A) A scheme may be either a standard scheme or an extended scheme.]

- (3) [<sup>F51</sup>A standard scheme] for a registered operator shall relate only to passengers—
  - (a) who are carried on chargeable aircraft operated by that operator,
  - (b) whose flights begin in the United Kingdom, and
  - (c) who are not passengers of a description mentioned in section 31(4) or (5) above;

and in this section any reference to the relevant passengers of a registered operator is a reference to passengers who fall within this subsection in relation to him.

- (4) [<sup>F51</sup>A standard scheme] for a registered operator shall provide, in relation to passengers who are relevant passengers of his in the period specified in the scheme, for methods of calculating—
  - (a) how many of those relevant passengers may be treated as passengers who are not chargeable passengers, and
  - (b) how many of them may be treated as passengers on the carriage of whom duty shall be charged at the rate mentioned in section 30(2) above.

[<sup>F52</sup>(4A) An extended scheme for a registered operator shall relate to all persons who are carried—

- (a) on chargeable aircraft operated by that operator, and
- (b) in circumstances where the aircraft take off in the United Kingdom;

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and in this section any reference to persons travelling with a registered operator is a reference to persons who fall within this subsection in relation to him.

- (4B) An extended scheme for a registered operator shall provide, in relation to persons travelling with him in the period specified in the scheme, for methods of calculating—
- (a) how many of them may be treated as persons who are not passengers,
  - (b) how many of them may be treated as passengers who are not chargeable passengers, and
  - (c) how many of them may be treated as passengers on the carriage of whom duty shall be charged at the rate mentioned in section 30(2) above.]
- (5) A calculation provided for by the scheme may be provided by reference to such factors as appear to the Commissioners to be expedient in the circumstances, including in particular information—
- (a) derived from surveys of [<sup>F53</sup>persons] carried on chargeable aircraft operated by the operator for whom the scheme is prepared, or
  - (b) relating to airports and routes used by that operator, whether obtained before or during the specified period.
- (6) No scheme prepared in accordance with this section shall be of any effect unless the registered operator for whom it is prepared elects in writing to be bound by it for the specified period.
- (7) If the registered operator makes such an election the scheme shall have effect for the specified period <sup>F54</sup> . . . .
- (8) [<sup>F55</sup>Where a standard scheme has effect for the specified period, this Chapter shall have effect for that period] as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4) above)—
- (a) each of the passengers who are relevant passengers of the registered operator were chargeable passengers, and
  - (b) duty were charged on the carriage of each of them at the rate mentioned in section 30(4) above.
- <sup>F56</sup>(8A) Where an extended scheme has effect for the specified period, this Chapter shall have effect for that period as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4B) above)—
- (a) each of the persons travelling with the registered operator were passengers of his,
  - (b) each of those passengers were chargeable passengers, and
  - (c) duty were charged on the carriage of each of them at the rate mentioned in section 30(4) above.]
- (9) Regulations may make further provision with respect to schemes under this section, including in particular provision amending this section.

#### Textual Amendments

- F50** S. 39(2A) inserted (1.6.1995) by S.I. 1995/1216, reg. 2(2)
- F51** Words in s. 39(3)(4) substituted (1.6.1995) by S.I. 1995/1216, reg. 2(3)(4)
- F52** S. 39(4A)(4B) inserted (1.6.1995) by S.I. 1995/1216, reg. 2(5)
- F53** Word in s. 39(5)(a) substituted (1.6.1995) by S.I. 1995/1216, reg. 2(6)
- F54** Words in s. 39(7) omitted (1.6.1995) by virtue of S.I. 1995/1216, reg. 2(7)

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**F55** Words in s. 39(8) substituted (1.6.1995) by S.I. 1995/1216, reg. 2(8)

**F56** S. 39(8A) inserted (1.6.1995) by S.I. 1995/1216, reg. 2(9)

### *Administration and enforcement*

#### **40 Administration and enforcement.**

- (1) Air passenger duty shall be a duty of excise and, accordingly, shall be under the care and management of the Commissioners.
- (2) Schedule 6 to this Act (administration and enforcement) shall have effect.

#### **41 Offences.**

- (1) A person who is knowingly concerned—
  - (a) in the fraudulent evasion (by him or another person) of duty, or
  - (b) in taking steps with a view to such fraudulent evasion,is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) above is liable—
  - (a) on summary conviction, to a penalty of—
    - (i) the statutory maximum, or
    - (ii) if greater, treble the amount of the duty evaded or sought to be evaded, or to imprisonment for a term not exceeding six months, or to both, or
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (3) A person who in connection with duty—
  - (a) makes a statement that he knows to be false in a material particular or recklessly makes a statement that is false in a material particular, or
  - (b) with intent to deceive, produces or makes use of a book, account, return or other document that is false in a material particular,is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above is liable—
  - (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both, or
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding two years, or to both.

### *Supplementary*

#### **42 Regulations and orders.**

- (1) In this Chapter “regulations” means regulations made by the Commissioners and “order” means an order made by the Treasury.
- (2) Regulations and orders may make different provision for different cases or circumstances and make incidental, supplemental, saving or transitional provision.

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- (3) Any power to make regulations or an order is exercisable by statutory instrument.
- (4) No order which appears to the Treasury to extend the circumstances in which passengers are to be treated as chargeable passengers shall be made unless a draft of the order has been laid before and approved by the House of Commons.
- (5) Any other order, and any regulations, shall be subject to annulment in pursuance of a resolution of the House of Commons.

### 43 Interpretation.

- (1) In this Chapter—

“accounting period” means any period prescribed or allowed for the purposes of section 38 above,

“agreement for carriage”, in relation to the carriage of any person, means the agreement or arrangement under which he is carried, whether the carriage is by a single carrier or successive carriers,

“Air Navigation Order” has the same meaning as in the <sup>M25</sup>Civil Aviation Act 1982,

“airport” means any aerodrome (within the meaning of that Act),

“carriage” means carriage wholly or partly by air, and “carried” is to be read accordingly,

“connected”, in relation to any flights, has the meaning given by section 30(8) above,

“document” includes information recorded in any form,

“duty” means air passenger duty,

“fiscal representative” has the meaning given by section 34(2) above,

“flight” has the meaning given by section 28(5) above,

“operator”, in relation to any aircraft, means the person having the management of the aircraft for the time being,

“passenger”, in relation to any aircraft, means—

- (a) where the operator is an air transport undertaking (within the meaning of the Air Navigation Order), any person carried on the aircraft other than—

- (i) a member of the flight crew,

- (ii) a cabin attendant, or

- (iii) a person who is not carried for reward, who is an employee of any aircraft operator and who satisfies such other requirements as may be prescribed, and

- (b) in any other case, any person carried on the aircraft for reward,

“prescribed” means prescribed by regulations,

“reward”, in relation to the carriage of any person, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given, and

“ticket” means a document or documents evidencing an agreement (wherever made) for the carriage of any person.

- (2) Subject to subsection (3) below, in this Chapter, in relation to a passenger whose agreement for carriage is evidenced by a ticket—



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“journey” means the journey from his original place of departure to his final place of destination, and

“original place of departure” and “final place of destination” mean the original place of departure and the final place of destination indicated on his ticket.

- (3) For the purposes of this Chapter, where the agreement for carriage of a passenger by air is evidenced by a ticket, the ticket is a return ticket if (and only if) it covers his return by air to the airport from which he originally departed; and, in such a case, there is both an outward and a return journey and the return journey is the journey from the final place of destination on the outward journey to that airport.
- (4) Subject to the preceding provisions of this section, expressions used in this Chapter and in the <sup>M26</sup>Customs and Excise Management Act 1979 have the same meaning as in that Act.

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**Marginal Citations**

**M25** 1982 c. 16.

**M26** 1979 c. 2.

**44 Commencement.**

- (1) This Chapter applies to any carriage of a passenger on an aircraft which begins after 31st October 1994.
- (2) For the purpose of determining whether or not a person is a chargeable passenger in relation to any carriage on an aircraft beginning after that date, the provisions of section 31 above and any order made by virtue of that section shall be treated as having applied to any such carriage of that person which began on or before that date as they would apply to any such carriage of that person beginning after that date.

**Status:**

Point in time view as at 01/10/1998.

**Changes to legislation:**

Finance Act 1994, Part I is up to date with all changes known to be in force on or before 17 June 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.