



# 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.

#### **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.

**F14** .....

**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**F1** S. 4 repealed (1.9.1994) by 1994 c. 22, s. 65, **Sch. 5 Pt.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](#)
- C2** Pt. 1 Ch. 2 applied (24.11.2003) by [The Channel Tunnel \(Alcoholic Liquor and Tobacco Products\) Order 2003 \(S.I. 2003/2758\)](#), arts. 1, [4\(a\)](#)
- C3** Pt. 1 Ch. 2 applied (1.4.2010) by [The Channel Tunnel \(Alcoholic Liquor and Tobacco Products\) Order 2010 \(S.I. 2010/594\)](#), arts. 1, [4\(a\)](#)

*<sup>F2</sup>The meaning of tribunal*

#### **Textual Amendments**

- F2** S. 7 and crossheading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 197\(2\)](#)

#### **7 Meaning of tribunal**

In the following provisions of this Chapter references to an appeal tribunal are references to the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

#### **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](#)

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### *Civil penalties*

#### **F<sup>3</sup>8 Penalty for evasion of excise duty.**

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##### **Textual Amendments**

**F3** S. 8 omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 21\(d\)\(i\)](#); [S.I. 2009/571](#), art. 2 (with art. 6)

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

**C4** S. 8: savings for effects of 2008 c. 40, Sch. 40 para. 21 (5.3.2009) by [The Finance Act 2008](#), [Schedule 41 \(Appointed Day and Transitional Provisions\) Order 2009 \(S.I. 2009/511\)](#), [art. 4\(b\)\(i\)](#)

##### **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 [<sup>F4</sup>, or by or under 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.

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- (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
  - (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.

#### Textual Amendments

**F4** Words in s. 9(2)(a) substituted (28.7.2000) by 2000 c. 17, s. 28

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

**C5** 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**

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- 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)**
- S. 9 applied (28.7.2000) by 1979 c. 7, **s. 8J(2)** (as inserted (28.7.2000) by 2000 c. 17, **s. 14**)
- C6** 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 (24.9.1996 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**
- C7** S. 9 extended (with application as mentioned in 2002 c. 23, s. 5(8)(b)) by Hydrocarbon Oil Duties Act 1979 (c. 5), s. 22(1AA) (as inserted by Finance Act 2002 (c. 23), **Sch. 2 para. 5(7)**)
- C8** S. 9 applied (1.8.2002) by S.I. 2002/1773, **reg. 15(2)**
- C9** S. 9 applied by 1979 c. 4, Sch. 2A para. 9(6) (as inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 1**)
- C10** S. 9 applied by 1979 c. 4, Sch. 2A para. 10(1)(a) (as inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 1**)

#### 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)

- C11** 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**

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#### 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—
- <sup>F5</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>F6</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
  - the person levying the distress and the person in default have entered into a walking possession agreement.
- (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—
- acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
  - 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

- F5** 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
- F6** 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—

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- (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>F7</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;
  - (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>M5</sup>Betting and Gaming Duties Act 1981 [<sup>F8</sup>or Schedule 1 to the Finance Act 1997][<sup>F9</sup>or Part 1 of Schedule 24 to the Finance Act 2012] to take or permit to be taken;
- [<sup>F10</sup>(ca) any failure by any person to comply with a requirement to which he is made subject by or under Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps);]
- (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.
- [<sup>F11</sup>(2A) In subsection (2)(a) and (b) above “enactment” includes directly applicable [<sup>F12</sup>EU] provision.]
- (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>F13</sup>[<sup>F14</sup> 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.



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(5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [<sup>F13</sup>[<sup>F15</sup>4 years]] were a reference to twenty years [<sup>F16</sup>in any case falling within subsection (5A) (a) or (b)] 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.

[<sup>F17</sup>(5A) The cases are—

- (a) a case involving a loss of duty of excise brought about deliberately by the person assessed (P) or by another person acting on P's behalf, and
- (b) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of duty of excise.]

(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.

[<sup>F18</sup>(6A) The reference in subsection (5A) to a loss of duty of excise brought about deliberately by P or another person includes a loss that arises as a result of—

- (a) a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by that person, or
- (b) a deliberate failure by that person to comply with an obligation specified in the Table in paragraph 1 of Schedule 41 to the Finance Act 2008 with respect to that duty of excise.]

[<sup>F19</sup>(7) .....

(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>F20</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

- F7** S. 12(1A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 7, 12; S.I. 1998/2243, art. 2
- F8** Words in s. 12(2)(c) inserted (19.3.1997) by 1997 c. 16, ss. 13, 15, Sch. 2 para. 7
- F9** Words in s. 12(2)(c) inserted (17.7.2012) (with effect in accordance with Sch. 24 para. 66(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 24 para. 47
- F10** S. 12(2)(ca) inserted (with effect in accordance with s. 4(5) of the amending Act) by Finance Act 2004 (c. 12), s. 4(3); S.I. 2006/201, art. 2
- F11** S. 12(2A) inserted (28.9.2001) by S.I. 2001/3022, reg. 9
- F12** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

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- F13** Words in s. 12(4)(a)(5) substituted (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 para. 6(2)(a)**
- F14** Words in s. 12(4)(a) substituted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(2)**; S.I. 2011/777, art. 2 (with arts. 34)
- F15** Words in s. 12(5) substituted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(2)**; S.I. 2011/777, art. 2 (with arts. 34)
- F16** Words in s. 12(5) substituted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(3)**; S.I. 2011/777, art. 2 (with art. 4)
- F17** S. 12(5A) inserted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(4)**; S.I. 2011/777, art. 2 (with art. 4)
- F18** S. 12(6A) inserted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(5)**; S.I. 2011/777, art. 2 (with art. 4)
- F19** S. 12(7) omitted (1.4.2011) (with effect in accordance with Sch. 13 para. 3(7) of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), s. 29(2), **Sch. 13 para. 3(6)**; S.I. 2011/777, art. 2 (with art. 4)
- F20** 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)

- C12** S. 12 applied by 1981 c. 63, s. 26I(4) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C13** S. 12 modified (19.3.1997) by 1997 c. 16, **ss. 12(6)(a), 15**
- C14** S. 12 modified by 1979 c. 5, s. 13AC(5) (as inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 11, 21**)
- C15** S. 12 modified by 1979 c. 5, s. 14E(6) (as inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 15, 21**)
- C16** 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**
- C17** S. 12(7) modified (E.W.) (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 22** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

#### 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

- M5** 1981 c. 63.

### [<sup>F21</sup>12A Other assessments relating to excise duty matters.

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—
- (a) has been given but ought not to have been given, or
  - (b) would not have been given had the facts been known or been as they later turn out to be.

*Status: Point in time view as at 17/07/2013.*

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- (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—
- (a) subsection (2) above,
  - (b) section 94 or 96 of the Management Act, <sup>F22</sup> . . .  
[ section 8, 10 <sup>F24</sup>, 11 or 36G] of the Alcoholic Liquor Duties Act 1979,]
  - <sup>F23</sup>(bb)
  - (c) section 10, 13, [<sup>F25</sup>13ZB, ][<sup>F26</sup>13AB,][<sup>F27</sup>13AD, ] 14, [<sup>F28</sup>14F, ] 23 or 24 of the <sup>M6</sup>Hydrocarbon Oil Duties Act 1979,  
[ section 8 of the Tobacco Products Duty Act 1979, or
  - <sup>F29</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 [<sup>F30</sup>4 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 [<sup>F31</sup>4 years] were a reference to twenty years in any case [<sup>F32</sup>falling within section 12(5A)(a) or (b)] .]
- <sup>F33</sup>(7) For the purposes of subsection (6), a reference in section 12(5A) to a loss of duty of excise includes a loss caused by giving relief, allowing a rebate, conferring an entitlement to drawback or repaying an amount that ought not to have been given, allowed, conferred or repaid.]

#### Textual Amendments

- F21** 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
- F22** 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
- F23** 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
- F24** Words in s. 12A(3)(bb) substituted (retrospective to 1.6.2002) by Finance Act 2002 (c. 23), s. 4(1)(2), Sch. 1 para. 4(2)
- F25** Word in s. 12A(3)(c) inserted (1.11.2008) by Finance Act 2008 (c. 9), Sch. 6 paras. 34, 37

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- F26** Word in s. 12A(3)(c) inserted (1.10.1998 for certain purposes, 1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by [Finance Act 1998 \(c. 36\)](#), [Sch. 2 paras. 8\(3\)](#), 12; [S.I. 2008/2302](#), arts. 2, 3; [S.I. 2009/1022](#), arts. 2, 3
- F27** Word in s. 12A(3)(c) inserted (1.11.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 6 paras. 18\(a\)](#), 21
- F28** Word in s. 12A(3)(c) inserted (1.11.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 6 paras. 18\(b\)](#), 21
- F29** S. 12A(3)(d)(e) inserted (1.10.1998 for certain purposes, 1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by [Finance Act 1998 \(c. 36\)](#), [Sch. 2 paras. 8\(3\)](#), 12; [S.I. 2008/2302](#), arts. 2, 3; [S.I. 2009/1022](#), arts. 2, 3
- F30** Words in s. 12A(4)(a) substituted (1.4.2011) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), s. 29(2), [Sch. 13 para. 5\(2\)](#); [S.I. 2011/777](#), art. 2 (with art. 5)
- F31** Words in s. 12A(6) substituted (1.4.2011) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), s. 29(2), [Sch. 13 para. 5\(2\)](#); [S.I. 2011/777](#), art. 2 (with art. 5)
- F32** Words in s. 12A(6) substituted (1.4.2011) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), s. 29(2), [Sch. 13 para. 5\(3\)](#); [S.I. 2011/777](#), art. 2
- F33** S. 12A(7) inserted (1.4.2011) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), s. 29(2), [Sch. 13 para. 5\(4\)](#); [S.I. 2011/777](#), art. 2

#### Marginal Citations

**M6** 1979 c. 5.

### <sup>F34</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)—

- (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 [<sup>F35</sup>or 20AB] 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;

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- (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>F36</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;]
  - [<sup>F37</sup>(ec) in the case of an assessment under section 36G of that Act, the the time at which the requirement to pay the duty took effect (which time, in a case where there was an excise duty point for the beer fixed under section 1 of the Finance (No. 2) Act 1992, is that excise duty point);]
  - (f) in the case of an assessment under section 10, 13, [<sup>F38</sup>13ZB, ][<sup>F39</sup>13AB,][<sup>F40</sup>13AD, ] 14 [<sup>F41</sup>, 14F] or 23 of the <sup>M7</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>F42</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;
  - (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—

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“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

- F34** 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**
- F35** Words in s. 12B(1)(h) inserted (11.5.2001) by 2001 c. 9, s. 3(4)
- F36** 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**
- F37** S. 12B(2)(ec) inserted (retrospective to 1.6.2002) by Finance Act 2002 (c. 23), s. 4(1)(2), **Sch. 1 para. 4(3)**
- F38** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 35, 37**
- F39** 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**
- F40** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 19(a), 21**
- F41** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 19(b), 21**
- F42** S. 12B(2)(ga)(gb) inserted (1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by Finance Act 1998 (c. 36), **Sch. 2 paras. 9(4), 12**; S.I. 2008/2302, arts. 2, 3; S.I. 2009/1022, arts. 2, 3

#### Marginal Citations

- M7** 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.
- (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



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- 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>F43</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>F43</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>F44</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

- F43** 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
- F44** 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

### *Customs and excise reviews and appeals*

#### [<sup>F45</sup>13A Meaning of “relevant decision”

- (1) This section applies for the purposes of the following provisions of this Chapter.
- (2) A reference to a relevant decision is a reference to any of the following decisions—
- (a) any decision by HMRC, in relation to any customs duty or to any agricultural levy of the [<sup>F46</sup>European Union], 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;

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- (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 HMRC 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;
- (c) any decision by HMRC to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act, section 8, 10, 11 or 36G of the [Alcoholic Liquor Duties Act 1979](#), section 10, 13, 13ZB, 13AB, 13AD, 14, 14F, 23 or 24 of the [Hydrocarbon Oil Duties Act 1979](#), 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;
- (d) any decision by HMRC on a claim under section 137A of the Management Act for repayment of excise duty;
- (e) any decision by HMRC as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under section 2 of the Finance (No 2) Act 1992, or the amount of the drawback to which any person is so entitled;
- (f) any decision by HMRC as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the [Alcoholic Liquor Duties Act 1979](#) (duty stamps), or the amount of the repayment or credit to which any person is so entitled;
- (g) any decision by HMRC made by virtue of regulations under paragraph 4(2)(i) of that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;
- <sup>F47</sup>(ga) [ any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;]
- (h) so much of any decision by HMRC 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;
- (i) any decision as to whether or not—
  - (i) an amount due in respect of customs duty or agricultural levy, or
  - (ii) any repayment by HMRC of an amount paid by way of customs duty or agricultural levy,
 is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;
- (j) any decision by HMRC which is of a description specified in Schedule 5 to this Act, except for any decision under section 152(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored.]



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#### Textual Amendments

- F45** S. 13A inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 198**
- F46** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))
- F47** S. 13A(2)(ga) inserted (17.7.2012) (with effect in accordance with Sch. 25 para. 12 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 25 para. 10**

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

- C18** Ss. 13A-16 applied by 1979 c. 7, s. 7C(3) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 93(2)**)

### 14 <sup>F48</sup><sup>F49</sup> Requirement for review of decision under section 152(b) of the Management Act etc]

(1) This section applies to the following decisions [<sup>F50</sup>by HMRC] , not being decisions under this section or section 15 below, that is to say—

- [<sup>F51</sup>(a) any decision under section 152(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;
- (b) any relevant decision which is linked by its subject matter to such a decision under section 152(b) of the Management 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.

[<sup>F52</sup>(2A) But in the case of a relevant decision that falls within subsection (1)(b), a person may require HMRC to review the decision under this section only if HMRC are also required to review the decision within subsection (1)(a) to which it is linked.]

(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.

(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—

- (a) requests such a notification;
- (b) has not previously been given written notification of that decision; and

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- (c) 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—
- (a) 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
- (b) 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.

<sup>F53</sup>(6) .....

<sup>F53</sup>(7) .....

#### Textual Amendments

- F48** Words in s. 14(1)(ba) inserted (1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by Finance Act 1998 (c. 36), **Sch. 2 paras. 10(c), 12**; S.I. 2008/2302, arts. 2, 3; S.I. 2009/1022, arts. 2, 3
- F49** S. 14 heading substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 199(2)** (with Sch. 3 paras. 2-4)
- F50** Words in s. 14(1) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 199(3)(a)** (with Sch. 3 paras. 2-4)
- F51** S. 14(1)(a)(b) substituted for s. 14(1)(a)-(d) (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 199(3)(b)** (with Sch. 3 paras. 2-4)
- F52** S. 14(2A) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 199(4)** (with Sch. 3 paras. 2-4)
- F53** S. 14(6)(7) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 199(5)** (with Sch. 3 paras. 2-4)

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

- C19** S. 14 applied (1.6.1995) by S.I. 1995/1046, **reg. 7(3)**  
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 (1.10.1995) by S.I. 1995/2351, **reg. 2**  
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)**  
S. 14 applied (28.7.2000 with effect as mentioned in 2000 c. 17, **Sch. 2 para. 10(2)**) by 1981 c. 63, **Sch. 4A para. 6(1)** (as inserted by 2000 c. 17, s. 17, **Sch. 2 para. 10**)
- C20** Ss. 14-16 modified (1.7.2005) by Finance Act 1995 (c. 4), s. 5(4)(6); S.I. 2005/1523, art. 2 (with art. 3)
- C21** Ss. 14-16 applied by 1981 c. 63, s. 26M(1) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C22** Ss. 14-16 applied by 1981 c. 63, s. 26M(2)-(4) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)

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#### 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](#)

#### [<sup>F54</sup>14A Review out of time

- (1) This section applies if—
  - (a) a person may, under section 14(2), require HMRC to review a decision, and
  - (b) the person gives notice requiring such a review after the end of the 45 day period mentioned in section 14(3).
- (2) HMRC are required to carry out a review of the decision in either of the following cases.
- (3) The first case is where HMRC are satisfied that—
  - (a) there was a reasonable excuse for not giving notice requiring a review before the end of that 45 day period, and
  - (b) the notice given after the end of that period was given without unreasonable delay after that excuse ceased.
- (4) The second case is where—
  - (a) HMRC are not satisfied as mentioned in subsection (3), and
  - (b) the appeal tribunal, on application made by the person, orders HMRC to carry out a review.
- (5) A person may require HMRC to review a decision falling within section 14(1)(b) only if HMRC are also required to review the decision within section 14(1)(a) to which it is linked.
- (6) Section 14(5) applies to notices given under this section as it applies to notices given under section 14.]

#### Textual Amendments

- F54** S. 14A inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 200](#) (with [Sch. 3 paras. 2-4](#))

#### 15 Review procedure.

- (1) Where the Commissioners are required in accordance with [<sup>F55</sup>section 14 or 14A] 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 [<sup>F56</sup>or 14A] above to review any decision; and

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- (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 [<sup>F57</sup>section 14 or 14A] 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.

#### Textual Amendments

- F55** Words in s. 15(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 201(2)** (with Sch. 3 paras. 2-4)
- F56** Words in s. 15(2)(a) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 201(3)(a)** (with Sch. 3 paras. 2-4)
- F57** Words in s. 15(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 201(3)(b)** (with Sch. 3 paras. 2-4)

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

- C20** Ss. 14-16 modified (1.7.2005) by [Finance Act 1995 \(c. 4\)](#), **s. 5(4)(6)**; S.I. 2005/1523, art. 2 (with art. 3)
- C21** Ss. 14-16 applied by 1981 c. 63, s. 26M(1) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C22** Ss. 14-16 applied by 1981 c. 63, s. 26M(2)-(4) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C23** 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**

#### [<sup>F58</sup>15A Offer of review of relevant decision

- (1) If HMRC notify a person (P) of a relevant decision by HMRC, HMRC must at the same time, by notice to P, offer P a review of the decision.
- (2) This section does not apply to the notification of the conclusions of a review.

#### Textual Amendments

- F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

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## **15B Right to require review**

- (1) Any person (other than P) who has the right of appeal under section 16 against a relevant decision may require HMRC to review that decision.
- (2) The other person may not notify HMRC requiring a review of the decision if either of the following conditions is met.
- (3) Condition A is that—
  - (a) the relevant decision falls within section 14(1)(b) (decision linked to decision under section 152(b) of the Management Act about things forfeited or seized), and
  - (b) under section 15, HMRC are reviewing, or have reviewed, the decision under section 152(b) of the Management Act to which the relevant decision is linked.
- (4) Condition B is that P or the other person has brought an appeal under section 16 with respect to the relevant decision.
- (5) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

### **Textual Amendments**

**F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

## **15C Review by HMRC**

- (1) HMRC must review a decision if—
  - (a) they have offered a review of the decision under section 15A, and
  - (b) P notifies HMRC of acceptance of the offer within 30 days beginning with the date of the document containing the notification of the offer of the review.
- (2) P may not notify HMRC of acceptance of the offer of review if either of the following conditions is met.
- (3) Condition A is that—
  - (a) the relevant decision falls within section 14(1)(b) (decision linked to decision under section 152(b) of the Management Act about things forfeited or seized), and
  - (b) under section 15, HMRC are reviewing, or have reviewed, the decision under section 152(b) of the Management Act to which the relevant decision is linked.
- (4) Condition B is that P has brought an appeal under section 16 with respect to the relevant decision.
- (5) HMRC must review a decision if a person other than P notifies them under section 15B.
- (6) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 16 in respect of the decision.

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### Textual Amendments

**F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

## 15D Extensions of time

- (1) If under section 15A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If under section 15B another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.
- (3) If notice is given the relevant period is extended to the end of 30 days from—
  - (a) the date of the notice, or
  - (b) any other date set out in the notice or a further notice.
- (4) In this section “relevant period” means—
  - (a) the period of 30 days referred to in—
    - (i) section 15C(1)(b) (in a case falling within subsection (1)), or
    - (ii) section 15B(5) (in a case falling within subsection (2)), or
  - (b) if notice has been given under subsection (1) or (2), that period as extended (or as most recently extended) in accordance with subsection (3).

### Textual Amendments

**F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

## 15E Review out of time

- (1) This section applies if—
  - (a) HMRC have offered a review of a decision under section 15A and P does not accept the offer within the time allowed under section 15C(1) or 15D(1); or
  - (b) a person who requires a review under section 15B does not notify HMRC within the time allowed under that section or section 15D(3).
- (2) HMRC must review the decision if—
  - (a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,
  - (b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
  - (c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not be required to review a decision under this section if Condition A is met (see sections 15B(3) and 15C(3)).
- (4) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 16 in respect of the decision.



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### Textual Amendments

**F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

## 15F Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 15C or 15E.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purposes of subsection (2) HMRC must, in particular, have regard to steps taken before the beginning of the review—
  - (a) by HMRC in making the decision, and
  - (b) by any person who is seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
  - (a) upheld,
  - (b) varied, or
  - (c) cancelled.
- (6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within—
  - (a) the period of 45 days beginning with the relevant date, or
  - (b) such other period as HMRC and P, or the other person, may agree.
- (7) In subsection (6) “relevant date” means—
  - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within section 15A),
  - (b) the date HMRC received notification from another person requiring review (in a case falling within section 15B), or
  - (c) the date on which HMRC decided to undertake the review (in a case falling within section 15E).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If subsection (8) applies, HMRC must notify P or the other person of the conclusion which the review is treated as having reached.]

### Textual Amendments

**F58** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

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## 16 Appeals to a tribunal.

- [<sup>F59</sup>(1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates.
- (1A) An appeal against a deemed confirmation under section 15(2) may be made to an appeal tribunal within the period of 75 days beginning with the date on which the review was required.
- (1B) Subject to subsections (1C) to (1E), an appeal against a relevant decision (other than any relevant decision falling within subsection (1) or (1A)) may be made to an appeal tribunal within the period of 30 days beginning with—
- (a) in a case where P is the appellant, the date of the document notifying P of the decision to which the appeal relates, or
  - (b) in a case where a person other than P is the appellant, the date the other person becomes aware of the decision, or
  - (c) if later, the end of the relevant period (within the meaning of section 15D).
- (1C) In a case where HMRC are required to undertake a review under section 15C—
- (a) an appeal may not be made until the conclusion date, and
  - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (1D) In a case where HMRC are requested to undertake a review in accordance with section 15E—
- (a) an appeal may not be made—
    - (i) unless HMRC have decided whether or not to undertake a review, and
    - (ii) if HMRC decide to undertake a review, until the conclusion date; and
  - (b) any appeal is to be made within the period of 30 days beginning with—
    - (i) the conclusion date (if HMRC decide to undertake a review), or
    - (ii) the date on which HMRC decide not to undertake a review.
- (1E) In a case where section 15F(8) applies, a notice of appeal may be made at any time from the end of the period specified in section 15F(6) to the date 30 days after the conclusion date.
- (1F) An appeal may be made after the end of the period specified in subsection (1), (1A), (1B), (1C)(b), (1D)(b) or (1E) if the appeal tribunal gives permission to do so.
- (1G) In this section “conclusion date” means the date of the document notifying the conclusion of the review]
- (2) An appeal under this section [<sup>F60</sup>with respect to a decision falling within subsection (1) or (1A)] shall not be entertained unless the appellant is the person who required the review in question.
- [<sup>F61</sup>(2A) An appeal under this section with respect to a relevant decision (other than any relevant decision falling within subsection (1) or (1A)) shall not be entertained unless the appellant 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 the relevant decision,



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- (b) a person in relation to whom, or on whose application, the relevant decision has been made, or
  - (c) a person on whom the conditions, limitations, restrictions, prohibitions or other requirements to which the relevant decision relates are or are to be imposed or applied.]
- (3) [<sup>F62</sup>An appeal which relates to a relevant decision falling within any of paragraphs (a) to (h) of section 13A(2), or which relates to a decision on a review of any such relevant decision, shall not be entertained if the amount of relevant duty which HMRC have determined to be payable in relation to that decision has not been paid or deposited with them 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>F63</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.]
- [<sup>F64</sup>(3B) Sections 85 and 85B of the Value Added Tax Act 1994 (settling of appeals by agreement and payment of tax where there is a further appeal) shall have effect as if—
- (a) the references to section 83 of that Act included references to this section, and
  - (b) the references to value added tax included references to any relevant duty.]
- (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, [<sup>F65</sup>a review or further review as appropriate] 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 [<sup>F65</sup>a review or further review as appropriate] , 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.

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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>M8</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>F66</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 [<sup>F67</sup>section 13A(2)(a) to (h)] above.
- [<sup>F68</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 [<sup>F69</sup>the following paragraphs of Schedule 5—
- (a) paragraph 3(4);
  - (b) paragraph 4(3);
  - (c) paragraph 9(e);
  - (d) paragraph 9A.]
- (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.]
- [<sup>F70</sup>(11) If it appears to HMRC that there is any description of decisions falling to be made for the purposes of any provision of—
- (a) the Community Customs Code,
  - (b) any [<sup>F12</sup>EU] legislation made for the purpose of implementing that Code, or
  - (c) any enactment or subordinate legislation so made,
- which are not decisions to which sections 13A to 16 otherwise apply, HMRC may by regulations provide for those sections to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in section 14.
- (12) The power to make regulations under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—

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- (a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that subsection (4) shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and
- (b) to make such other incidental, supplemental, consequential and transitional provision as HMRC think fit.]

### Textual Amendments

- F12** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F59** S. 16(1)-(1G) substituted for s. 16(1) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(2)** (with Sch. 3 paras. 2-4)
- F60** Words in s. 16(2) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(3)** (with Sch. 3 paras. 2-4)
- F61** S. 16(2A) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(4)** (with Sch. 3 paras. 2-4)
- F62** Words in s. 16(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(5)** (with Sch. 3 paras. 2-4)
- F63** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, **12**; S.I. 1998/2243, **art. 2**
- F64** S. 16(3B) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(6)** (with Sch. 3 paras. 2-4)
- F65** Words in s. 16(4)(b)(c) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(7)** (with Sch. 3 paras. 2-4)
- F66** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F67** Words in s. 16(8) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(8)** (with Sch. 3 paras. 2-4)
- F68** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F69** S. 16(9)(a)-(d) and the preceding words substituted for words in s. 16(9) (1.11.2001) by 2001 c. 9, s. **15**, **Sch. 3 para. 16**; S.I. 2001/3300, **art. 3**
- F70** S. 16(11)(12) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(9)** (with Sch. 3 paras. 2-4)

### Modifications etc. (not altering text)

- C20** Ss. 14-16 modified (1.7.2005) by [Finance Act 1995 \(c. 4\)](#), s. **5(4)(6)**; S.I. 2005/1523, art. 2 (with art. 3)
- C21** Ss. 14-16 applied by 1981 c. 63, s. 26M(1) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C22** Ss. 14-16 applied by 1981 c. 63, s. 26M(2)-(4) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 1 para. 2**; S.I. 2007/2172, art. 2)
- C24** 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)**
- C25** 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**

*Status: Point in time view as at 17/07/2013.*

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### Marginal Citations

**M8** 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 <sup>[F46]</sup>European Union] dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;
  - <sup>[F71]</sup>“HMRC” means Her Majesty’s Revenue and Customs;]
  - “the Management Act” means the <sup>M9</sup>Customs and Excise Management Act 1979;
  - “relevant duty” means any <sup>[F12]</sup>EU] customs duty or agricultural levy of the <sup>[F46]</sup>European Union] or any duty of excise; and
  - “subordinate legislation” has the same meaning as in the <sup>M10</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>[F72]</sup>vehicle] excise duty.

### Textual Amendments

- F12** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F46** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))
- F71** Words in s. 17(2) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 204**
- F72** 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

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### Marginal Citations

**M9** 1979 c. 2.

**M10** 1978 c. 30.

## 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>F73</sup> . . . were an amount of excise duty payable by that person;<sup>F74</sup> . . .
  - <sup>F74</sup>(b) . . . . .
- (3) Section 127 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect;<sup>F75</sup> . . .
- <sup>F76</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>M11</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>F77</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

- F73** 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**
- F74** 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**
- F75** 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**
- F76** 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**
- F77** Words in s. 18(8) substituted (1.7.1997) by 1997 c. 16, s. 53(4)(9); S.I. 1997/1432, **art. 2**

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#### 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](#)

#### Marginal Citations

**M11** 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.

*Status: Point in time view as at 17/07/2013.*

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- (2) In subsection (1) above “duty of customs” includes any agricultural levy of the [<sup>F46</sup>European Union] .
- (3) In this Chapter—
- (a) “customs goods” means any goods mentioned in paragraph (a) of subsection (1) above; and
  - (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>M12</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.

#### Textual Amendments

**F46** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

#### Marginal Citations

**M12** 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.



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- (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.
- (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>F78</sup>(a) .....
  - <sup>F79</sup>(b) .....
  - (c) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M13</sup>Civil Evidence (Scotland) Act 1988;
  - (d) in criminal proceedings in Scotland, except in accordance with [<sup>F80</sup>Schedule 8 to the Criminal Procedure (Scotland) Act 1995];
  - <sup>F81</sup>(e) .....
  - <sup>F82</sup>(f) .....

### Textual Amendments

- F78** S. 22(2)(a) repealed (31.1.1997) by 1995 c. 38, s. 15(2), **Sch. 2**; S.I. 1996/3217, **art. 2**
- F79** S. 22(2)(b) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 37 Pt. 6**; S.I. 2005/950, **art. 2(1)**, **Sch. 1 para. 44(3)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, **art. 2**; and as amended: (14.7.2008) by 2008 c. 4, **Sch. 26 para. 78**, **Sch. 28 Pt. 2**; S.I. 2008/1586, **Sch. 1 paras. 48(s)**, **50(2)(d)**; (30.11.2009) by S.I. 2009/3111, **art. 2**; (3.12.2012) by S.I. 2012/2905, **art. 4**; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; S.I. 2012/2906, **art. 2(1)**)
- F80** Words in s. 22(2) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 89(2)**
- F81** S. 22(2)(e) repealed (6.9.1999) by S.I. 1997/2983 (N.I. 21), **arts. 1(2)**, **3(2)**, **Sch. 2**; S.R. 1999/339, **art. 2**
- F82** S. 22(2)(f) repealed (N.I.) (3.4.2006) by The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501), **art. 1(3)**, **Sch. 2** (with **art. 43**); S.R. 2006/63, **art. 2**



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#### **Marginal Citations**

**M13** 1988 c. 32.

### **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—
  - (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.

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- (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—

- (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 <sup>F83</sup>section 308 of the Criminal Procedure (Scotland) Act 1995].

### Textual Amendments

**F83** 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—

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- (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, 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—

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- (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>M14</sup>Magistrates’ Courts (Northern Ireland) Order 1981.
- (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>M15</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**

**M14** S.I. 1981/1675 (N.I. 26).

**M15** 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.
- [<sup>F84</sup>(3) Sections 29 and 29A below set out how to determine if an aircraft 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.

*Status: Point in time view as at 17/07/2013.*

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- (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.

#### Textual Amendments

**F84** S. 28(3) substituted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 17](#)

## 29 Chargeable aircraft.

- [<sup>F85</sup>(1) For the purposes of this Chapter an aircraft is a chargeable aircraft if—
- (a) it is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,
  - (b) its authorised take-off weight is not less than 5.7 tonnes, and
  - (c) it is fuelled by kerosene (as defined in section 1(8) of the Hydrocarbon Oil Duties Act 1979).]

- (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 [<sup>F86</sup>5.7] 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 [<sup>F86</sup>5.7] tonnes, or
- (b) the Commissioners are satisfied that the aircraft is not designed or adapted to take off when its take-off weight is [<sup>F86</sup>5.7] 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.

<sup>F87</sup>(3) .....

- (4) In this section “certificate of airworthiness” has the same meaning as in the Air Navigation Order.

#### Textual Amendments

**F85** S. 29(1) substituted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 18\(2\)](#)

**F86** Word in s. 29(2) substituted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 18\(3\)](#)

**F87** S. 29(3) omitted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 18\(4\)](#)

## [<sup>F88</sup>29A Chargeable aircraft: exceptions

- (1) This section applies for the purposes of this Chapter.
- (2) An aircraft is not a chargeable aircraft whenever its operation falls within an exemption set out in sub-paragraph (b), (c), (f) or (g) under the category of activity “Aviation” in Annex I to Directive [2003/87/EC](#) of the European Parliament and of the Council of

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13 October 2003 (as amended by Directive [2008/101/EC](#) of the European Parliament and of the Council of 19 November 2008).

- (3) Those exemptions are to be read in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision [2009/450/EC](#) of 8 June 2009.
- (4) An aircraft is not a chargeable aircraft whenever it is being operated under a public service obligation imposed under Article 16 of Regulation [\(EC\) No 1008/2008](#) of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).]

#### Textual Amendments

**F88** S. 29A inserted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 19](#)

### 30 The rate of duty.

[<sup>F89</sup>(1) Air passenger duty is chargeable on the carriage of each chargeable passenger at the rate determined as follows.

[<sup>F90</sup>(1A) Subsection (1) does not apply to the carriage of a chargeable passenger to which section 30A below (Northern Ireland long haul rates of duty) applies.]

(2) If the passenger's journey ends at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A—

- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is [<sup>F91</sup>£13], and
- (b) in any other case, the rate is [<sup>F92</sup>£26].

(3) If the passenger's journey ends at a place in a territory specified in Part 2 of Schedule 5A—

- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is [<sup>F93</sup>£67], and
- (b) in any other case, the rate is [<sup>F94</sup>£134].

(4) If the passenger's journey ends at a place in a territory specified in Part 3 of Schedule 5A—

- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is [<sup>F95</sup>£83], and
- (b) in any other case, the rate is [<sup>F96</sup>£166].

(4A) If the passenger's journey ends at any other place—

- (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is [<sup>F97</sup>£94], and
- (b) in any other case, the rate is [<sup>F98</sup>£188].]

<sup>F99</sup>(4B) .....

<sup>F99</sup>(4C) .....

<sup>F99</sup>(4D) .....

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[<sup>F100</sup>(4E) In relation to the carriage of a chargeable passenger on an aircraft to which subsection (4F) applies—

- (a) if the rate which (apart from this subsection) would apply is the rate in subsection (2)(a) or (b), a rate equal to twice the rate in subsection (2)(b) is to apply instead,
- (b) if the rate which (apart from this subsection) would apply is the rate in subsection (3)(a) or (b), a rate equal to twice the rate in subsection (3)(b) is to apply instead,
- (c) if the rate which (apart from this subsection) would apply is the rate in subsection (4)(a) or (b), a rate equal to twice the rate in subsection (4)(b) is to apply instead, and
- (d) if the rate which (apart from this subsection) would apply is the rate in subsection (4A)(a) or (b), a rate equal to twice the rate in subsection (4A)(b) is to apply instead.

(4F) This subsection applies to an aircraft if—

- (a) its authorised take-off weight is not less than 20 tonnes, but
- (b) it is not authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants).

(4G) In subsection (4F)(a) “take-off weight” is to be read in accordance with section 29(2) but as if “20” were substituted for “ 5.7 ” wherever occurring.

(4H) For the purposes of subsection (4F)(b) an aircraft is authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants) if—

- (a) there is a certificate of airworthiness (as defined in section 29(4)) 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 more than 18, or
- (b) the Commissioners are satisfied that the aircraft is designed or adapted to seat more than 18 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.]

(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.

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

[<sup>F101</sup>(8A) The Treasury may by order amend Schedule 5A.]

<sup>F102</sup>(9) . . . . .

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F<sup>102</sup>(9A) .....

F<sup>102</sup>(9B) .....

[<sup>F103</sup>(10) In this section “standard class travel”, in relation to carriage on an aircraft, means—  
 (a) in the case of an aircraft on which only one class of travel is available, that class of travel;  
 (b) in any other case, the lowest class of travel available on the aircraft.]

[<sup>F104</sup>(11) But a class of travel is not standard class travel if the seats for passengers whose agreement for carriage provides for that class of travel have a pitch exceeding 1.016 metres (40 inches).

(12) For this purpose “pitch”, in relation to a seat, means the distance between a fixed point on the seat and the same point on the seat immediately in front of it; but where there is no seat immediately in front of the seat, the seat is to be treated as having the same pitch as the seat immediately behind it.]

#### Textual Amendments

- F89** S. 30(1)-(4A) substituted for s. 30(1)-(4) (with effect in accordance with s. 17(3) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 17\(1\)](#)
- F90** S. 30(1A) inserted (with effect in accordance with Sch. 23 para. 8(4) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 8\(2\)](#)
- F91** Word in s. 30(2)(a) substituted (with effect in accordance with Sch. 23 para. 6 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 4\(2\)\(a\)](#)
- F92** Word in s. 30(2)(b) substituted (with effect in accordance with Sch. 23 para. 6 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 4\(2\)\(b\)](#)
- F93** Word in s. 30(3)(a) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(2\)\(a\)](#)
- F94** Word in s. 30(3)(b) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(2\)\(b\)](#)
- F95** Word in s. 30(4)(a) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(3\)\(a\)](#)
- F96** Word in s. 30(4)(b) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(3\)\(b\)](#)
- F97** Word in s. 30(4A)(a) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(4\)\(a\)](#)
- F98** Word in s. 30(4A)(b) substituted (17.7.2013) (with effect in accordance with s. 185(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 185\(4\)\(b\)](#)
- F99** S. 30(4B)-(4D) omitted (with effect in accordance with Sch. 23 para. 8(4) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 8\(3\)](#)
- F100** S. 30(4E)-(4H) inserted (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 20](#)
- F101** S. 30(8A) inserted (with effect in accordance with Sch. 5 para. 8(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 5 para. 2\(2\)](#)
- F102** S. 30(9)-(9B) omitted (with effect in accordance with Sch. 5 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 5 para. 2\(3\)](#)
- F103** S. 30(10) added (with application as mentioned in [s. 18\(8\)](#) of the amending Act) by [2000 c. 17](#), [s. 18\(6\)](#)
- F104** S. 30(11)(12) inserted (with effect in accordance with s. 153(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 153\(1\)](#)



*Status: Point in time view as at 17/07/2013.*

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### **[<sup>F105</sup>30A Northern Ireland long haul rates of duty**

- (1) This section applies to the carriage of a chargeable passenger if—
  - (a) the carriage begins on or after the relevant day,
  - (b) the only flight, or the first flight, of the passenger's journey begins at a place in Northern Ireland,
  - (c) the passenger's journey does not end at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A, and
  - (d) if the passenger's journey has more than one flight, the first flight is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.
- (2) Air passenger duty is chargeable on the carriage of the chargeable passenger at the rate determined as follows.
- (3) If the passenger's journey ends at a place in a territory specified in Part 2 of Schedule 5A—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.
- (4) If the passenger's journey ends at a place in a territory specified in Part 3 of Schedule 5A—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.
- (5) If the passenger's journey ends at any other place—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.

[ In relation to the carriage of a chargeable passenger on an aircraft to which <sup>F106</sup>(5A) section 30(4F) applies—

- (a) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (3)(a) or (b), the following rate is to apply instead—
  - (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or
  - (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (3)(b),
- (b) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (4)(a) or (b), the following rate is to apply instead—
  - (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or
  - (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (4)(b), and

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- (c) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (5)(a) or (b), the following rate is to apply instead—
- (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or
  - (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (5)(b).]
- (6) The rate of £0 may be set for the purposes of any paragraph.
- (7) The same rate may be set for the purposes of two or more paragraphs.
- (8) Subsections (5) to (7) and (10) to (12) of section 30 apply for the purposes of this section as they apply for the purposes of that section.
- (9) “The relevant day” means the day appointed as such by an order.
- (10) Section 42(4) and (5) does not apply to an order under subsection (9).
- (11) None of the following applies to any matter in respect of which this section authorises provision to be made by an Act of the Northern Ireland Assembly—
- (a) any paragraph of Schedule 2 or 3 to the Northern Ireland Act 1998 (excepted and reserved matters);
  - (b) section 63 of that Act (financial acts of the Assembly).
- (12) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly except in pursuance of a recommendation which—
- (a) is made by the Minister of Finance and Personnel, and
  - (b) is signified to the Assembly by the Minister or on the Minister's behalf.
- (13) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly without cross-community support (as defined in section 4(5) of the Northern Ireland Act 1998).
- (14) “Passed”, in relation to a Bill, means passed at the final stage (at which the Bill can be passed or rejected but not amended).
- (15) Duty paid to the Commissioners in respect of the carriage of chargeable passengers to which this section applies must be paid by the Commissioners into the Consolidated Fund of Northern Ireland.]

#### Subordinate Legislation Made

**P2** S. 30A(9): 1.1.2013 appointed as "the relevant day" (3.12.2012) by [S.I. 2012/3015](#), [art. 2](#)

#### Textual Amendments

**F105** S. 30A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 9](#)

**F106** S. 30A(5A) inserted (17.7.2012 with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 21](#)

### 31 Passengers: exceptions.

**F107**(1) .....

**F107**(2) .....

*Status: Point in time view as at 17/07/2013.*

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- (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>F108</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.]

[<sup>F109</sup>(4B) 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) the flight is to depart from an airport which is in a region of the United Kingdom designated by order.

(4C) An order may be made for the purposes of subsection (4B) above in respect of any region which has a population density of not more than 12.5 persons per square kilometre.

(4D) In subsections (4B) and (4C) above, references to a region are references to an area which is determined by the Treasury to constitute a region for the purposes of those subsections.]

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

    - (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.

<sup>F107</sup>(6) .....

#### Textual Amendments

**F107** S. 31(1)(2)(6) repealed (28.7.2000 with application as mentioned in s. 19(6) of the repealing Act) by 2000 c. 17, ss. 19(2)(4), 156, Sch. 40 Pt. I(4)

**F108** S. 31(4A) inserted (29.4.1996) by 1996 c. 8, s. 13(1)

**F109** S. 31(4B)-(4D) inserted (28.7.2000 with application as mentioned in s. 19(6) of the amending Act) by 2000 c. 17, s. 19(3)

## 32 Change of circumstances after ticket issued etc.

(1) [<sup>F110</sup>Subsections (2) and (3) below apply] in the case of a person whose agreement for carriage is evidenced by a ticket.

(2) Where—

*Status: Point in time view as at 17/07/2013.*

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- (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>F111</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
- (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**

**F110** Words in s. 32(1) substituted (29.4.1996) by 1996 c. 8, s. 13(2)(a)

**F111** 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.

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[<sup>F112</sup>(2A) If the Commissioners decide to keep a register under section 33A below, an operator of a chargeable aircraft does not become liable to be registered under this section just because the aircraft is used for the carriage of chargeable passengers to which section 30A above applies.]

(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 [<sup>F113</sup>or, if the Commissioners have decided to keep a register under section 33A below, that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers apart from the carriage of chargeable passengers to which section 30A above applies] .

(4) A person who is not registered [<sup>F114</sup>under this section] and has not given notice under this subsection shall, if he becomes liable to be registered [<sup>F114</sup>under this section] 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.

<sup>F115</sup>(6) . . . . .

(7) Regulations may make provision as to the information to be included in, and the correction of, the register kept under this section [<sup>F116</sup>or section 33A below] .

(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).

**Textual Amendments**

- F112** S. 33(2A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 10\(2\)](#)
- F113** Words in s. 33(3)(b) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 10\(3\)](#)
- F114** Words in s. 33(4) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 10\(4\)](#)
- F115** S. 33(6) omitted (1.4.2010) (with effect in accordance with art. 3 of the commencing S.I.) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 123(2), [Sch. 41 para. 25\(e\)\(i\)](#); S.I. 2009/511, art. 2 (with art. 4)
- F116** Words in s. 33(7) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 10\(5\)](#)

**[<sup>F117</sup>33A Registration of Northern Ireland long haul aircraft operators**

(1) The Commissioners may under this section keep a register of aircraft operators.

*Status: Point in time view as at 17/07/2013.*

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- (2) If the Commissioners decide to keep a register under this section, the operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of chargeable passengers to which section 30A above applies.
- (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 to which section 30A above applies.
- (4) A person who is not registered under this section and has not given notice under this subsection shall, if he becomes liable to be registered under this section 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.]

#### Textual Amendments

F117 S. 33A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 11](#)

### 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 [F118 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

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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 <sup>F119</sup> ..., 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 [<sup>F120</sup> section 33 or 33A above] , 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

**F118** Words in s. 34(4) inserted (31.7.1998) by 1998 c. 36, s. 15(2)

**F119** Words in s. 34(5) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), Sch. 23 para. 12(a)

**F120** Words in s. 34(5)(a) substituted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 23 para. 12(b)

#### [<sup>F121</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,
  - (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



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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

**F121** 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—
  - (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.

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- (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.

### **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.
- [<sup>F122</sup>(2A) Regulations may require a prescribed person to make, at prescribed times during a prescribed period, payments based on an estimate of what the person's liability will be for duty charged in the period.
- (2B) The estimate and the amounts of the payments are to be determined in accordance with provision made by the regulations.
- (2C) The payments are to be treated as being payments on account of the person's liability for duty charged in the period.
- (2D) The regulations must make provision for dealing with cases where this results in an overpayment of duty by providing for amounts—
- (a) to be repaid by the Commissioners, or

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- (b) to be treated as having been paid on account of the person's liability for duty charged in other periods,  
 or both.]
- (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.

#### Textual Amendments

**F122** S. 38(2A)-(2D) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), s. 186(1)

### [<sup>F123</sup>39 Schemes for simplified operation of Chapter

- (1) This section applies if the Commissioners consider that, having regard to difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, it is appropriate for this Chapter to have effect in relation to the registered operator in accordance with a special accounting scheme.
- (2) The Commissioners may agree with the registered operator that this Chapter is to have effect in relation to the registered operator in accordance with a special accounting scheme agreed between the Commissioners and the registered operator (but subject to subsection (4)).
- (3) A special accounting scheme is a scheme which makes provision for methods of calculating—
- (a) how many persons are to be regarded for the purposes of this Chapter as chargeable passengers carried by chargeable aircraft operated by a registered operator, and
  - (b) how many of those are to be so regarded as having been so carried on journeys in respect of which duty is chargeable at any particular rate.
- (4) The Commissioners may publish a notice specifying terms and conditions subject to which special accounting schemes are to have effect.
- (5) Where the Commissioners and a registered operator have agreed that this Chapter is to have effect in relation to the registered operator in accordance with a special accounting scheme, this Chapter has effect in relation to the registered operator in accordance with the scheme (and with any notice under subsection (4) which has been published by the Commissioners and not withdrawn) for the period agreed by the Commissioners and the registered operator.
- (6) The Commissioners and the registered operator may at any time agree to vary the special accounting scheme for the future.
- (7) The Commissioners may at any time terminate the operation of the special accounting scheme—
- (a) on the application of the registered operator, or
  - (b) where they have reasonable grounds for doing so,

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by giving notice to the registered operator.]

#### **Textual Amendments**

**F123** S. 39 substituted (21.7.2009) (with effect in accordance with Sch. 5 para. 8(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 5 para. 3](#) (with [Sch. 5 para. 8\(1\)](#))

### *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.

#### **[<sup>F124</sup>41A Northern Ireland long haul rates of duty: disclosure of information**

- (1) An officer of Revenue and Customs may disclose to the Secretary of State, the Treasury or the Department of Finance and Personnel in Northern Ireland any information for purposes connected with the setting of rates of duty under section 30A above, including (in particular) to enable the setting of rates under that section to be

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taken into account for the purposes of section 58 of the Northern Ireland Act 1998 (payments by Secretary of State into Consolidated Fund of Northern Ireland).

- (2) Information disclosed under subsection (1) above may not be further disclosed without the consent of the Commissioners (which may be general or specific).
- (3) In section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) references to section 18(1) of that Act are to be read as including a reference to subsection (2) above.]

#### Textual Amendments

**F124** S. 41A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 13](#)

### *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.
- (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 [<sup>F125</sup>, or to increase the rate of air passenger duty to be charged on the carriage of any chargeable passengers whose journeys end in any place, ] 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.

#### Textual Amendments

**F125** Words in s. 42(4) inserted (21.7.2009) (with effect in accordance with Sch. 5 para. 8(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 5 para. 4](#)

#### **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>M16</sup>Civil Aviation Act 1982,
  - “airport” means any aerodrome (within the meaning of that Act),

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“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,

[<sup>F126</sup>“passenger”, in relation to any aircraft, means any person carried on the aircraft other than—

(a) a member of the flight crew,

(b) a cabin attendant, or

(c) a person who is not carried for reward and who satisfies such other requirements as may be prescribed.]

“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.

[<sup>F127</sup>(1A) The agreements and arrangements covered by the definition of “agreement for carriage” in subsection (1) include informal agreements or arrangements between, for example, members of a family or friends.]

(2) <sup>F128</sup> . . . , in this Chapter, in relation to a passenger whose agreement for carriage is evidenced by a ticket—

“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.

<sup>F129</sup>(3) . . . . .

(4) Subject to the preceding provisions of this section, expressions used in this Chapter and in the <sup>M17</sup>Customs and Excise Management Act 1979 have the same meaning as in that Act.

#### Textual Amendments

**F126** Words in s. 43(1) substituted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 22\(2\)](#)

**F127** S. 43(1A) inserted (17.7.2012) (with effect in accordance with Sch. 23 para. 23 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 23 para. 22\(3\)](#)

**F128** Words in s. 43(2) repealed (28.7.2000 with effect as mentioned in s. 19(6) of the repealing Act) by [2000 c. 17, ss. 19\(5\)\(a\), 156](#), [Sch. 40 Pt. I\(4\)](#)

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**F129** S. 43(3) repealed (28.7.2000 with effect as mentioned in s. 19(6) of the repealing Act) by 2000 c. 17, ss. 19(5)(b), 156, **Sch. 40 Pt. I(4)**

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**Marginal Citations**

**M16** 1982 c. 16.

**M17** 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.



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