



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

### CHAPTER II

#### APPEALS AND PENALTIES

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

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

*VAT and duties tribunals*

**7 VAT and duties tribunals.**

<sup>F1</sup>(1) .....

<sup>F1</sup>(2) .....

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

(4) Sections [<sup>F2</sup>85 and 87 of the Value Added Tax Act 1994] (settling of appeals by agreement and enforcement of decisions of tribunal) shall have effect as if—

(a) the references to section [<sup>F3</sup>83 of that Act] included references to this Chapter; and

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

(5) Without prejudice to the generality of the power conferred by paragraph 9 of Schedule [<sup>F4</sup>12 to the Value Added Tax Act 1994] (rules of procedure for tribunals), rules under that paragraph may provide for costs awarded against an appellant on an appeal by

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virtue of this Chapter to be recoverable, and for any directly applicable Community legislation relating to any relevant duty or any enactment so relating to apply, as if the amount awarded were an amount of duty which the appellant is required to pay.

- (6) In Part I of Schedule 1 to the <sup>M1</sup>Tribunals and Inquiries Act 1992 (tribunals under direct supervision of Council on Tribunals), for the entry beginning “Value added tax” there shall be substituted the following entry—

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

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

- F1** S. 7(1)(2) repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(2), **Sch. 15**
- F2** S. 7(4): Words substituted for “25 and 29 of the Finance Act 1985” (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by virtue of 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)**
- F3** Words in s. 7(4)(a) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)** (asretrospectively amended by 1995 c. 4, s. 33(5))
- F4** Words in s. 7(5) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(b)**

#### Commencement Information

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

#### Marginal Citations

- M1** 1992 c. 53.

### *Civil penalties*

## 8 Penalty for evasion of excise duty.

- (1) Subject to the following provisions of this section, in any case where—
- (a) any person engages in any conduct for the purpose of evading any duty of excise, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.

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- (2) References in this section to a person's evading a duty of excise shall include references to his obtaining or securing, without his being entitled to it—
- (a) any repayment, rebate or drawback of duty;
  - (b) any relief or exemption from or any allowance against duty; or
  - (c) any deferral or other postponement of his liability to pay any duty or of the discharge by payment of any such liability,
- and shall also include references to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.
- (3) In relation to any such evasion of duty as is mentioned in subsection (2) above, the reference in subsection (1) above to the amount of duty evaded or sought to be evaded shall be construed as a reference to the amount of the repayment, rebate, drawback, relief, exemption or allowance or, as the case may be, the amount of the payment which, or the liability to make which, is deferred or otherwise postponed.
- (4) Where a person is liable to a penalty under this section—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
  - (b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners.
- (5) Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say—
- (a) the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty.
- (6) Statements made or documents produced by or on behalf of a person shall not be inadmissible in—
- (a) any criminal proceedings against that person in respect of any offence in connection with or in relation to any duty of excise, or
  - (b) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any duty of excise,
- by reason only that any of the matters specified in subsection (7) below has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (7) The matters mentioned in subsection (6) above are—
- (a) that the Commissioners have power, in relation to any duty of excise, to assess an amount due by way of a civil penalty, instead of instituting criminal proceedings;
  - (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such an assessment in any case, to be influenced in determining whether to make such an assessment by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;

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- (c) that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under this section, as provided in subsection (4) above; and
  - (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.
- (8) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.

#### Commencement Information

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

## 9 Penalties for contraventions of statutory requirements.

- (1) This section applies, subject to section 10 below, to any conduct in relation to which any enactment (including an enactment contained in this Act or in any Act passed after this Act) provides for the conduct to attract a penalty under this section.
- (2) Any person to whose conduct this section applies shall be liable—
- (a) in the case of conduct in relation to which provision is made by subsection (4) below [<sup>F5</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.
- (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

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- 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

**F5** Words in s. 9(2)(a) substituted (28.7.2000) by 2000 c. 17, s. 28

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

- C2** S. 9 applied (1.1.1995) by 1979 c. 2, **ss. 92(6)(8)**, 93(6), 100J, 101(4), 107(2)(3), 108(4), 111(1), 114(2), 115(4), 116(3), 118G, 170A(1)(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 2(1)(2), 3, 4, 5(b), 6(1)(2), 7, 8(1), 9, 10(1)(b), 11, 12, **13(1)(2)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 4, **ss. 8(2)**, 10(2), 13(3)(5), 15(4)(5)(7), 16(2)(3), 18(6), 19(2), 20(1)(2), 21(3), 22(9), 24(4), 33(1)(5), 34(2), 35(3), 41A(8), 44(2), 46(2), 47(4)(5), 49(3), 54(5), 55(6), 55A(3), 56(2), 59(2), 61(2), 62(4)(6), 64(2), 67(2), 69(3)(4), 71(1)(3), 75(5), 77(3)(4), 78(4), 82(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 15, 16, 17(1)(a)(3), 18(1)(2)(3), 19(1)(2), 20, 21(1), 22, 23(1), 24, 25, 26(1)(2), 27, 28, 29, 30, 31, 32(1)(2), 33, 34, 35, 36(b), 37, 38, 39, 40(1)(2), 41, 42, 43(1)(2), 44(1)(2), 45(b), 46(1)(2), 47, **48**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 5, **ss. 10(3)(4)**, 13(1)(2), 14(4)(5), 18(5), 20AA(4)(a), 21(3), 22(1), 23(1), 24(4) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 50(1)(b)(2)(c), 51(1)(b)(2)(c), 52(1)(b)(2)(c), 53, 54, 55(b), 56(1)(b), 57(1)(b), **58(b)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 7, **s. 7(2)** (as amended (1.1.1995) by 1994 c. 9, s. 9, **Sch. 4 para. 59**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1981 c. 63, s. 24(5), Sch. 1 paras. 13(1), 14(3), Sch. 2 para. 7(1), Sch. 3 para. 16(3)(b), **Sch. 4 para. 16(1)** (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 61(a), 62(1)(2)(b), 63(1), 64(1), **65(1)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1993 c. 34, **ss. 27(4)**, 28(3), 29(8) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 67(b), **68(b)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (19.3.1997) by 1997 c. 16, **ss. 12(5)(a)**, 13(1), 15, 50(1), Sch. 1 paras. 5(3), 7, 10(3), **Sch. 5 para. 4(1)**
- S. 9 applied (28.7.2000) by 1979 c. 7, **s. 8J(2)** (as inserted (28.7.2000) by 2000 c. 17, **s. 14**)

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- C3** 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
- C4** 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))
- C5** S. 9 applied (1.8.2002) by S.I. 2002/1773, reg. 15(2)

#### 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)

- C6** S. 10 excluded (1.1.1995) by 1979 c. 2, ss. 114(2), 170A(2) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 9, 13(2) (with s. 19(3)); S.I. 1994/2679, art. 3  
S. 10 excluded (1.1.1995) by 1979 c. 5, ss. 22(1A), 23(1A) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 56(2), 57(2) (with s. 19(3)); S.I. 1994/2679, art. 3

#### Commencement Information

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

## 11 Breaches of walking possession agreements.

- (1) This section applies where—

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- (a) [<sup>F6</sup>in accordance with regulations under section 51 of the Finance Act 1997 (enforcement by distress)], a person (“the person levying the distress”) is empowered or authorised to distrain any property of another person (“the person in default”) [<sup>F7</sup>who has refused or neglected to pay any amount of relevant duty or any amount recoverable as if it were an amount of relevant duty due from him]; and
- (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) In this section a “walking possession agreement” means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
- (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one-half of the unpaid duty or penalty which gives rise to the distraint.
- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

#### Textual Amendments

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

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

#### Commencement Information

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

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

## 12 Assessments to excise duty.

- (1) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
- (b) that there has been a default falling within subsection (2) below,
- the Commissioners may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.

[<sup>F8</sup>(1A) Subject to subsection (4) below, where it appears to the Commissioners—

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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 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>M2</sup>Betting and Gaming Duties Act 1981 [<sup>F9</sup>or Schedule 1 to the Finance Act 1997] to take or to permit to be taken;
  - (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.
- (3) Where an amount has been assessed as due from any person and notified in accordance with this section, it shall, subject to any appeal under section 16 below, be deemed to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (5) below, the end of the period of [<sup>F10</sup>three years] beginning with the time when his liability to the duty arose; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;
- but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.
- (5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [<sup>F10</sup>three years] were a reference to twenty years in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by—
- (a) conduct in respect of which any person (whether or not the person assessed)—
    - (i) has become liable to a penalty under section 8 above, or
    - (ii) has been convicted of an offence of fraud or dishonesty; or
  - (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Management Act.
- (6) The reference in subsection (4) above to the time when a person's liability to a duty of excise arose are references—



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- (a) in the case of a duty of excise on goods, to the excise duty point; and
  - (b) in any other case, to the time when the duty was charged.
- (7) In this section references to an offence of fraud or dishonesty include references to an offence under any of the following provisions, that is to say-
- (a) sections 100(3), 136(1), 159(6), 167(1), 168(1), 170(1) and (2) and 170B(1) of the Management Act,
  - (b) section 24(6) of the <sup>M3</sup>Betting and Gaming Duties Act 1981 and paragraph 13(3) of Schedule 1, <sup>F11</sup>. . . and paragraph 16(1) of Schedule 3 to that Act,
  - (c) section 31(1) and (3) of the <sup>M4</sup>Finance Act 1993, and
  - (d) section 41(1) and (3) below,
- and also include references to attempting or conspiring to commit an offence of fraud or dishonesty and to inciting the commission of such an offence.
- (8) In this section “representative”, in relation to a person appearing to the Commissioners to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative [<sup>F12</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

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

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

- C7** S. 12 modified (19.3.1997) by 1997 c. 16, ss. 12(6)(a), 15
- C8** S. 12(1) extended (29.4.1996 with effect as mentioned in 1996 c. 8, s. 6(5)) by 1979 c. 5, s. 20AAB(5) (as inserted by 1996 c. 8, s. 6(3)(5)); S.I. 1996/2751, art. 2

#### Commencement Information

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

#### Marginal Citations

- M2** 1981 c. 63.
- M3** 1981 c. 63.
- M4** 1993 c. 34.

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

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—

*Status: Point in time view as at 11/05/2001.*

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- (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.
- (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>F14</sup> . . .
  - <sup>F15</sup>(bb) [ section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,]
  - (c) section 10, 13, [<sup>F16</sup>13AB,] 14, 23 or 24 of the <sup>M5</sup>Hydrocarbon Oil Duties Act 1979,
  - <sup>F17</sup>(d) [ section 8 of the Tobacco Products Duty Act 1979, or
  - (e) section 2 of the Finance (No. 2) Act 1992,]
- and notice has been given accordingly, that amount shall, subject to any appeal under section 16 below, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) No assessment under any of the provisions referred to in subsection (3) above, or under section 61 or 167 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (6) below, the end of the period of three years beginning with the relevant time; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.
- (5) Subsection (4) above shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.
- (6) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of, conduct falling within subsection (5)(a) or (b) of section 12 above (construed in accordance with subsection (7) of that section).]

#### Textual Amendments

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

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**F17** S. 12A(3)(d)(e) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 8(3), 12; S.I. 1998/2243, art. 2

#### Marginal Citations

**M5** 1979 c. 5.

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

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

- (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>F19</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;
- (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;

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- [<sup>F20</sup>(ea) in the case of an assessment under section 8 or 10 of the Alcoholic Liquor Duties Act 1979, the time of delivery from warehouse;
  - (eb) in the case of an assessment under section 11 of that Act, the time when the direction was made;]
  - (f) in the case of an assessment under section 10, 13, [<sup>F21</sup>13AB,] 14 or 23 of the <sup>M6</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>F22</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—

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

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

#### Textual Amendments

- F18** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, **art. 2**
- F19** Words in s. 12B(1)(h) inserted (11.5.2001) by 2001 c. 9, s. 3(4)
- F20** 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**
- F21** 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**
- F22** S. 12B(2)(ga)(gb) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 9(4), 12; S.I. 1998/2243, **art. 2**

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### Marginal Citations

M6 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 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>F23</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>F23</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>F24</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.

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#### Textual Amendments

- F23** 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
- F24** 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*

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

- (1) This section applies to the following decisions, not being decisions under this section or section 15 below, that is to say—
- (a) any decision by the Commissioners, in relation to any customs duty or to any agricultural levy of the European Community, as to—
    - (i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
    - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
    - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
    - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled;
  - (b) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under section 12 above;
  - <sup>F25</sup>(ba) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act <sup>F26</sup>, section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,] section 10, 13, <sup>F27</sup>13AB,] 14, 23 or 24 of the <sup>M7</sup>Hydrocarbon Oil Duties Act 1979, <sup>F28</sup>section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No. 2) Act 1992,] or as to the amount of duty to which a person is to be assessed under any of those provisions;]
  - <sup>F29</sup>(bb) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;]
  - (c) so much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above;
  - <sup>F30</sup>(ca) any decision as to whether or not—
    - (i) an amount due in respect of customs duty or agricultural levy, or
    - (ii) any repayment by the Commissioners of an amount paid by way of customs duty or agricultural levy,

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- is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;]
- (d) any decision by the Commissioners or any officer which is of a description specified in Schedule 5 to this Act.
- (2) Any person who is—
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
- (b) a person in relation to whom, or on whose application, such a decision has been made, or
- (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
- may by notice in writing to the Commissioners require them to review that decision.
- (3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
- (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
- (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.
- (6) If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of—
- (a) the Community Customs Code,
- (b) any Community legislation made for the purpose of implementing that Code, or
- (c) any enactment or subordinate legislation so made,
- which are not decisions to which this section otherwise applies, the Commissioners may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1) above.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—



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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 section 16(4) below 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 the Commissioners think fit.

#### Textual Amendments

- F25** S. 14(1)(ba) inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(2), 7; S.I. 1997/1305, **art. 2**
- F26** Words in s. 14(1)(ba) substituted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(a), **12**; S.I. 1998/2243, **art. 2**
- F27** Word in s. 14(1)(ba) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(b), **12**; S.I. 1998/2243, **art. 2**
- F28** Words in s. 14(1)(ba) inserted (1.10.1998 for certain purposes) by 1998 c. 36, s. 20, Sch. 2 paras. 10(c), **12**; S.I. 1998/2243, **art. 2**
- F29** S. 14(1)(bb) inserted (1.5.1995 with effect as mentioned in s. 20(5) of the amending Act) by 1995 c. 4, s. 20(4)(5); S.I. 1995/2892, **art. 2**
- F30** S. 14(1)(ca) substituted for word “and” at the end of s. 14(1)(c) (27.7.1999 with effect as mentioned in s. 130(4) of the amending Act) by 1999 c. 16, s. 130(1)(4)

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

- C9** 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**)

#### Commencement Information

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

#### Marginal Citations

- M7** 1979 c. 5.

## 15 Review procedure.

- (1) Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either—
  - (a) confirm the decision; or
  - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.
- (2) Where—
  - (a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 above to review any decision; and



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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 this Chapter to have confirmed the decision.
- (3) The Commissioners shall not by virtue of any requirement under this Chapter to review a decision have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

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

- C10** 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](#)

## **16 Appeals to a tribunal.**

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions, that is to say—
- (a) any decision by the Commissioners on a review under section 15 above (including a deemed confirmation under subsection (2) of that section); and
- (b) any decision by the Commissioners on such review of a decision to which section 14 above applies as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 14(3) above.
- (2) An appeal under this section shall not be entertained unless the appellant is the person who required the review in question.
- (3) An appeal which relates to, or to any decision on a review of, any decision falling within any of paragraphs (a) to (c) of section 14(1) above shall not be entertained if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any relevant duty to the Commissioners (including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners) unless—
- (a) the Commissioners have, on the application of the appellant, issued a certificate stating either—
- (i) that such security as appears to them to be adequate has been given to them for the payment of that amount; or
- (ii) that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;

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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>F31</sup>(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.]

- (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

- (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>F32</sup>Subject to subsection (9) below] references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 14(1)(a) to (c) above.

[<sup>F33</sup>(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in paragraph 9(e) of Schedule 5 to this Act.

*Status: Point in time view as at 11/05/2001.*

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- (10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.]

#### Textual Amendments

- F31** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, 12; S.I. 1998/2243, art. 2  
**F32** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)  
**F33** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)

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

- C11** 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)  
**C12** 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

#### 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 European Communities dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;

“the Management Act” means the <sup>M9</sup>Customs and Excise Management Act 1979;

“relevant duty” means any Community customs duty or agricultural levy of the European Community or any duty of excise; and

“subordinate legislation” has the same meaning as in the <sup>M10</sup>Interpretation Act 1978.

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- (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 [F34]vehicle] excise duty.

#### Textual Amendments

**F34** Word in s. 17(4) substituted (1.9.1994 subject to transitional provisions in Sch. 4 of the amending Act) by 1994 c. 22, ss. 63, 66(1), Sch. 3 para. 32 (with s. 57(4))

#### Commencement Information

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

#### Marginal Citations

**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>F35</sup> . . . were an amount of excise duty payable by that person;<sup>F36</sup> . . .
- <sup>F36</sup>(b) . . . . .
- (3) Section 127 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect;<sup>F37</sup> . . .
- <sup>F38</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

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payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”

- (8) Subsections (1) [<sup>F39</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

- F35** 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**
- F36** 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**
- F37** 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**
- F38** 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**
- F39** Words in s. 18(8) substituted (1.7.1997) by 1997 c. 16, s. 53(4)(9); S.I. 1997/1432, **art. 2**

#### Commencement Information

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

#### 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**

**Status:**

Point in time view as at 11/05/2001.

**Changes to legislation:**

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