



# 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](#)
- 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>F1</sup>The meaning of tribunal*

##### Textual Amendments

- F1** 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.]

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#### 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](#)

### *Civil penalties*

## **F<sup>2</sup>8 Penalty for evasion of excise duty.**

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#### Textual Amendments

- F2** 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>F3</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.

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- (4) Where any conduct to which this section applies consists in a failure, in contravention of any subordinate legislation, to pay any amount of any duty of excise or an amount payable on account of any such duty, then, in so far as that would not otherwise be the case—
- (a) the penalty attracted to that contravention shall be calculated by reference to the amount unpaid; and
  - (b) the contravention shall also attract daily penalties.
- (5) Where—
- (a) a contravention of any provision made by or under any enactment consists in or involves a failure, before such time as may be specified in or determined in accordance with that provision, to send a return to the Commissioners showing the amount which any person is or may become required to pay by way of, or on account of, any duty of excise, and
  - (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

**F3** 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

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- 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**)
- 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**)
- C11** S. 9 applied (with modifications) by 1979 c. 7, s. 6B(2)(3) (as inserted (26.3.2015) by Finance Act 2015 (c. 11), **s. 56**)

### 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

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above applies was attributable to the conduct of that other person shall be a reasonable excuse.

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

**C12** 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**

## <sup>F5</sup>[<sup>F4</sup>10A] Breaches of controlled goods agreements

#### Textual Amendments

**F4** S. 10A inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 114** (with s. 89); S.I. 2014/768, **art. 2(1)(b)**

**F5** S. 10A omitted (6.4.2014) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 3(2)**; S.I. 2014/906, **art. 2**

## 11 Breaches of walking possession agreements.

(1) This section applies where—

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

(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.

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- (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.

[<sup>F8</sup>(5) This section extends only to Northern Ireland.]

#### 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
- F8** S. 11(5) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 13 para. 115 (with s. 89); S.I. 2014/768, art. 2(1)(b)

#### 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>F9</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 <sup>F10</sup>... 3 to the <sup>M1</sup>Betting and Gaming Duties Act 1981 [<sup>F11</sup>or Schedule 1 to the Finance Act 1997][<sup>F12</sup>or Part 1 of Schedule 24 to the Finance Act 2012 [<sup>F13</sup>or Part 3 of the Finance Act 2014]] to take or to permit to be taken;

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- [<sup>F14</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>F15</sup>(2A) In subsection (2)(a) and (b) above “enactment” includes directly applicable [<sup>F16</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>F17</sup>[<sup>F18</sup>4 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>F17</sup>[<sup>F19</sup>4 years]] were a reference to twenty years [<sup>F20</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>F21</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.

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[<sup>F22</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>F23</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>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.

#### Textual Amendments

- F9** S. 12(1A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 7, 12; S.I. 1998/2243, art. 2
- F10** Words in s. 12(2)(c) omitted (1.12.2014) by virtue of Finance Act 2014 (c. 26), s. 198(2)(c), Sch. 28 para. 16(a) (with Sch. 29)
- F11** Words in s. 12(2)(c) inserted (19.3.1997) by 1997 c. 16, ss. 13, 15, Sch. 2 para. 7
- F12** 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
- F13** Words in s. 12(2)(c) inserted (1.12.2014) by Finance Act 2014 (c. 26), s. 198(2)(c), Sch. 28 para. 16(b) (with Sch. 29)
- F14** 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
- F15** S. 12(2A) inserted (28.9.2001) by S.I. 2001/3022, reg. 9
- F16** 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))
- F17** Words in s. 12(4)(a)(5) substituted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 para. 6(2)(a)
- F18** 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)
- F19** 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)
- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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



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

- C13** S. 12 applied by 1981 c. 63, s. 261(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)
- C14** S. 12 modified (19.3.1997) by [1997 c. 16](#), [ss. 12\(6\)\(a\)](#), 15
- C15** 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](#))
- C16** 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](#))
- C17** S. 12 applied (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [ss. 167\(3\)](#), 198(1) (with [Sch. 29](#))
- C18** 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)
- C19** 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

- M1** [1981 c. 63](#).

### [<sup>F25</sup>12A Other assessments relating to excise duty matters.

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—
- has been given but ought not to have been given, or
  - would not have been given had the facts been known or been as they later turn out to be.
- (2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.
- (3) Where an amount has been assessed as due from any person under—
- subsection (2) above,
  - section 94 or 96 of the Management Act, <sup>F26</sup> . . .  
[ section 8, 10 [<sup>F28</sup>, 11 or 36G] of the Alcoholic Liquor Duties Act 1979,]  
<sup>F27</sup>(bb)
  - section 10, 13, [<sup>F29</sup>13ZB, ][<sup>F30</sup>13AB,][<sup>F31</sup>13AD, ] 14, [<sup>F32</sup>14F, ] 23 or 24 of the <sup>M2</sup>Hydrocarbon Oil Duties Act 1979,  
[ section 8 of the Tobacco Products Duty Act 1979, or  
<sup>F33</sup>(d)
  - 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.

*Status: Point in time view as at 26/03/2015.*

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- (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>F34</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>F35</sup>4 years] were a reference to twenty years in any case [<sup>F36</sup>falling within section 12(5A)(a) or (b)].
- [<sup>F37</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

- F25** 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**
- F26** 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**
- F27** 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**
- F28** 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)**
- F29** Word in s. 12A(3)(c) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 34, 37**
- F30** 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
- F31** Word in s. 12A(3)(c) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 18(a), 21**
- F32** Word in s. 12A(3)(c) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 18(b), 21**
- F33** 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
- F34** 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)
- F35** 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)
- F36** 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
- F37** 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

- M2** 1979 c. 5.

*Status: Point in time view as at 26/03/2015.*

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**F38 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 [F39 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;
- [F40](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;]
- [F41](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);]

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- (f) in the case of an assessment under section 10, 13, [<sup>F42</sup>13ZB, <sup>F43</sup>13AB, <sup>F44</sup>13AD, ] 14 [<sup>F45</sup>, 14F] or 23 of the <sup>M3</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>F46</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

- F38** 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**
- F39** Words in s. 12B(1)(h) inserted (11.5.2001) by 2001 c. 9, s. 3(4)
- F40** 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**
- F41** 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)**
- F42** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 35, 37**
- F43** 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**
- F44** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 19(a), 21**
- F45** Word in s. 12B(2)(f) inserted (1.11.2008) by Finance Act 2008 (c. 9), **Sch. 6 paras. 19(b), 21**

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**F46** 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

**M3** 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>F47</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>F47</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>F48</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or

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any of his property or any other person acting in a representative capacity in relation to that person.

#### **Textual Amendments**

- F47** 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](#)
- F48** 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>F49</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>F50</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;
    - (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;

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- [<sup>F51</sup>(ea) any decision by HMRC that a person is liable to a penalty, or as to the amount of the person's liability, under—
- (i) regulations under section 88E of the Alcoholic Liquor Duties Act 1979; or
  - (ii) Schedule 2B to that Act;]
  - (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>F52</sup>(ga) . . . . .

  - (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.]

**Textual Amendments**

- F49** 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**
- F50** 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))
- F51** S. 13A(2)(ea) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), s. 54(6)(8)
- F52** S. 13A(2)(ga) omitted (1.12.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), s. 198(2)(c), **Sch. 28 para. 17** (with [Sch. 29](#))

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

- C20** 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)**)
- C21** S. 13A(2) modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(1), 198(1)** (with [Sch. 29](#))

**14** <sup>F53</sup>[<sup>F54</sup>**Requirement for review of decision under section 152(b) of the Management Act etc]**

- (1) This section applies to the following decisions [<sup>F55</sup>by HMRC] , not being decisions under this section or section 15 below, that is to say—

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- [<sup>F56</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>F57</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
- (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>F58</sup>(6) .....

<sup>F58</sup>(7) .....

**Textual Amendments**

**F53** 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



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- F54** 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)
- F55** 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)
- F56** 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)
- F57** 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)
- F58** 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)

- C22** 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**)
- C23** 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)
- C24** 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)
- C25** 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)
- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by Finance Act 2014 (c. 26), **ss. 182(3), 198(1)** (with Sch. 29)

#### 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>F59</sup>14A Review out of time

- (1) This section applies if—
- a person may, under section 14(2), require HMRC to review a decision, and
  - 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—
- there was a reasonable excuse for not giving notice requiring a review before the end of that 45 day period, and
  - the notice given after the end of that period was given without unreasonable delay after that excuse ceased.

*Status: Point in time view as at 26/03/2015.*

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- (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

**F59** 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)

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

**C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3), 198(1)** (with Sch. 29)

## 15 Review procedure.

- (1) Where the Commissioners are required in accordance with [<sup>F60</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>F61</sup>or 14A] above to review any decision; and
  - (b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review,
- they shall be assumed for the purposes of [<sup>F62</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

**F60** 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)

**F61** 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)

**F62** 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)

*Status: Point in time view as at 26/03/2015.*

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

- C23** 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](#))
- C24** 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](#))
- C25** 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](#))
- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\), ss. 182\(3\), 198\(1\)](#) (with [Sch. 29](#))
- C27** 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>F63</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**

- F63** 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](#))

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

- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\), ss. 182\(3\), 198\(1\)](#) (with [Sch. 29](#))
- C28** S. 15A modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\), ss. 172\(1\), 198\(1\)](#) (with [Sch. 29](#))
- C29** S. 15A modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 6\(4\)\(5\)](#)
- C30** S. 15A modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 4\(3\)\(4\)](#)
- C31** S. 15A modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 2\(3\)\(4\)](#)
- C32** S. 15A modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 7\(3\)\(4\)](#)

### 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—

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- (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**

**F63** 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)

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

**C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3), 198(1)** (with Sch. 29)

### **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.

#### **Textual Amendments**

**F63** 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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#### **Modifications etc. (not altering text)**

- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3), 198(1)** (with Sch. 29)
- C33** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 2(3)(4)
- C34** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 6(4)(5)
- C35** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 4(3)(4)
- C36** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 7(3)(4)
- C37** Ss. 15C-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 172(1), 198(1)** (with Sch. 29)

### **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**

- F63** 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)

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

- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3), 198(1)** (with Sch. 29)
- C33** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 2(3)(4)
- C34** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 6(4)(5)
- C35** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 4(3)(4)
- C36** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 7(3)(4)
- C37** Ss. 15C-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 172(1), 198(1)** (with Sch. 29)

### **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

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- (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.

#### Textual Amendments

- F63** 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)

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

- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3), 198(1)** (with Sch. 29)
- C33** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 2(3)(4)
- C34** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 6(4)(5)
- C35** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 4(3)(4)
- C36** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 27 para. 7(3)(4)
- C37** Ss. 15C-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 172(1), 198(1)** (with Sch. 29)

### 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.

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- (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

**F63** 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)

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

**C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 182(3)**, 198(1) (with Sch. 29)

**C33** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 27 para. 2(3)(4)**

**C34** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 27 para. 6(4)(5)**

**C35** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 27 para. 4(3)(4)**

**C36** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 27 para. 7(3)(4)**

**C37** Ss. 15C-16 modified (with effect in accordance with s. 198(5) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **ss. 172(1)**, 198(1) (with Sch. 29)

## 16 Appeals to a tribunal.

[<sup>F64</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

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- (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.
- [<sup>F65</sup>(1D) In a case where HMRC are requested to undertake a review in accordance with section 15E—
- (a) an appeal may not be made to an appeal tribunal—
    - (i) unless HMRC have notified P, or the other person, as to whether or not a review will be undertaken, and
    - (ii) if HMRC have notified P, or the other person, that a review will be undertaken, until the conclusion date;
  - (b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;
  - (c) if HMRC have notified P, or the other person, that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.]
- (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>F66</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>F67</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,
  - (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>F68</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—]



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- (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>F69</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>F70</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>F71</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>F71</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.
- (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>M4</sup>Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),

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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>F72</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>F73</sup>section 13A(2)(a) to (h)] above.
- [<sup>F74</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>F75</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>F76</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>F16</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—
- (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

- F16** 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))
- F64** 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)
- F65** S. 16(1D) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), 2 (with art. 1(3))

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- F66** 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)
- F67** 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)
- F68** 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)
- F69** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, **12**; S.I. 1998/2243, **art. 2**
- F70** 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)
- F71** 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)
- F72** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F73** 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)
- F74** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F75** 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**
- F76** 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)

- C23** 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)
- C24** 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)
- C25** 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)
- C26** Ss. 14-16 modified (with effect in accordance with s. 198(5) of the amending Act) by Finance Act 2014 (c. 26), **ss. 182(3), 198(1)** (with Sch. 29)
- C33** Ss. 15C-16 modified (17.7.2014) by Finance Act 2014 (c. 26), Sch. 27 para. 2(3)(4)
- C34** Ss. 15C-16 modified (17.7.2014) by Finance Act 2014 (c. 26), Sch. 27 para. 6(4)(5)
- C35** Ss. 15C-16 modified (17.7.2014) by Finance Act 2014 (c. 26), Sch. 27 para. 4(3)(4)
- C36** Ss. 15C-16 modified (17.7.2014) by Finance Act 2014 (c. 26), Sch. 27 para. 7(3)(4)
- C37** Ss. 15C-16 modified (with effect in accordance with s. 198(5) of the amending Act) by Finance Act 2014 (c. 26), **ss. 172(1), 198(1)** (with Sch. 29)
- C38** 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)**
- C39** 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

- M4** 1979 c. 5.

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### *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>[F50]</sup>European Union] dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;
  - <sup>[F77]</sup>“HMRC” means Her Majesty’s Revenue and Customs;]
  - “the Management Act” means the <sup>M5</sup>Customs and Excise Management Act 1979;
  - “relevant duty” means any <sup>[F16]</sup>EU] customs duty or agricultural levy of the <sup>[F50]</sup>European Union] or any duty of excise; and
  - “subordinate legislation” has the same meaning as in the <sup>M6</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>[F78]</sup>vehicle] excise duty.

#### Textual Amendments

- F16** 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))
- F50** 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))
- F77** 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**
- F78** 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

- M5** 1979 c. 2.  
**M6** 1978 c. 30.

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## 18 Consequential modifications of enactments.

- (1) Subject to subsection (2) below, references in the Management Act to a penalty shall not include references to a penalty under this Chapter.
- (2) Section 117 of the Management Act (execution and distress against revenue traders) shall have effect—
  - (a) as if any amount assessed as due from any person by way of a penalty under this Chapter<sup>F79</sup> . . . were an amount of excise duty payable by that person;<sup>F80</sup> . . .
  - <sup>F80</sup>(b) . . . . .
- (3) Section 127 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect;<sup>F81</sup> . . .
- <sup>F82</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>M7</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>F83</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

- F79** 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**
- F80** 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**
- F81** 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**
- F82** 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**
- F83** Words in s. 18(8) substituted (1.7.1997) by 1997 c. 16, s. 53(4)(9); S.I. 1997/1432, **art. 2**

### Commencement Information

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

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### Marginal Citations

M7 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 26/03/2015.

**Changes to legislation:**

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