



Finance Act 1994

1994 CHAPTER 9

PART I

CUSTOMS AND EXCISE

CHAPTER II

APPEALS AND PENALTIES

Civil penalties

^{F1} 8 Penalty for evasion of excise duty.

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Textual Amendments

- F1** 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)

- C1** 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

- II** 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](#)

Status: Point in time view as at 01/04/2009.

Changes to legislation: Finance Act 1994, Cross Heading: Civil penalties is up to date with all changes known to be in force on or before 31 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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 [^{F2}, 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 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

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- (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

- F2** 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)
- 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)**
- C6** 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**)
- C7** S. 9 applied by 1979 c. 4, Sch. 2A para. 10(1)(a) (as inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 1**)

Commencement Information

- I2** 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**

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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)

- C8** 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

- I3** S. 10 wholly in force at 1.1.1995; s. 10 not in force at Royal Assent see s. 19(1); s. 10 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2, Sch.**; s. 10 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

11 Breaches of walking possession agreements.

- (1) This section applies where—
 - (a) [^{F3}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”) [^{F4}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

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- (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

F3 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

F4 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

I4 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

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