



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

### CHAPTER II

#### APPEALS AND PENALTIES

##### *Customs and excise reviews and appeals*

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

- (1) This section applies to the following decisions, not being decisions under this section or section 15 below, that is to say—
- (a) any decision by the Commissioners, in relation to any customs duty or to any agricultural levy of the European Community, as to—
    - (i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
    - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
    - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
    - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled;
  - (b) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under section 12 above;

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- [<sup>F1</sup>(ba) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act [<sup>F2</sup>, section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,] section 10, 13, [<sup>F3</sup>13AB,] 14, 23 or 24 of the <sup>M1</sup>Hydrocarbon Oil Duties Act 1979, [<sup>F4</sup>section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No. 2) Act 1992,] or as to the amount of duty to which a person is to be assessed under any of those provisions;]
- [<sup>F5</sup>(bb) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;]
- (c) so much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above;
- [<sup>F6</sup>(ca) any decision as to whether or not—
- (i) an amount due in respect of customs duty or agricultural levy, or
- (ii) any repayment by the Commissioners of an amount paid by way of customs duty or agricultural levy,
- is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;]
- (d) any decision by the Commissioners or any officer which is of a description specified in Schedule 5 to this Act.
- (2) Any person who is—
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
- (b) a person in relation to whom, or on whose application, such a decision has been made, or
- (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
- may by notice in writing to the Commissioners require them to review that decision.
- (3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
- (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- (a) requests such a notification;
- (b) has not previously been given written notification of that decision; and
- (c) if given such a notification, will be entitled to require a review of the decision under this section.
- (5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and

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- (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.
- (6) If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of—
- (a) the Community Customs Code,
  - (b) any Community legislation made for the purpose of implementing that Code, or
  - (c) any enactment or subordinate legislation so made,
- which are not decisions to which this section otherwise applies, the Commissioners may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1) above.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—
- (a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that section 16(4) below shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and
  - (b) to make such other incidental, supplemental, consequential and transitional provision as the Commissioners think fit.

#### Textual Amendments

- F1** S. 14(1)(ba) inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(2), 7; S.I. 1997/1305, **art. 2**
- F2** Words in s. 14(1)(ba) substituted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(a), **12**; S.I. 1998/2243, **art. 2**
- F3** Word in s. 14(1)(ba) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(b), **12**; S.I. 1998/2243, **art. 2**
- F4** Words in s. 14(1)(ba) inserted (1.10.1998 for certain purposes) by 1998 c. 36, s. 20, Sch. 2 paras. 10(c), **12**; S.I. 1998/2243, **art. 2**
- F5** S. 14(1)(bb) inserted (1.5.1995 with effect as mentioned in s. 20(5) of the amending Act) by 1995 c. 4, s. 20(4)(5); S.I. 1995/2892, **art. 2**
- F6** S. 14(1)(ca) substituted for word “and” at the end of s. 14(1)(c) (27.7.1999 with effect as mentioned in s. 130(4) of the amending Act) by 1999 c. 16, s. 130(1)(4)

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

- C1** 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**)

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#### Commencement Information

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

#### Marginal Citations

- M1** 1979 c. 5.

### 15 Review procedure.

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

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

- C2** 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

- I2** S. 15 wholly in force at 1.1.1995; s. 15 not in force at Royal Assent see s. 19(1); s. 15 in force for certain purposes at 1.11.1994 by [S.I. 1994/2679](#), [art. 2](#), [Sch.](#); s. 15 in force at 1.1.1995 insofar as not already in force by [S.I. 1994/2679](#), [art. 3](#)

### 16 Appeals to a tribunal.

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions, that is to say—
- (a) any decision by the Commissioners on a review under section 15 above (including a deemed confirmation under subsection (2) of that section); and
  - (b) any decision by the Commissioners on such review of a decision to which section 14 above applies as the Commissioners have agreed to undertake

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in consequence of a request made after the end of the period mentioned in section 14(3) above.

- (2) An appeal under this section shall not be entertained unless the appellant is the person who required the review in question.
- (3) An appeal which relates to, or to any decision on a review of, any decision falling within any of paragraphs (a) to (c) of section 14(1) above shall not be entertained if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any relevant duty to the Commissioners (including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners) unless—
  - (a) the Commissioners have, on the application of the appellant, issued a certificate stating either—
    - (i) that such security as appears to them to be adequate has been given to them for the payment of that amount; or
    - (ii) that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;
  - or
  - (b) the tribunal to which the appeal is made decide that the Commissioners should not have refused to issue a certificate under paragraph (a) above and are satisfied that such security (if any) as it would have been reasonable for the Commissioners to accept in the circumstances has been given to the Commissioners.

[<sup>F7</sup>(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.]

- (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—
  - (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
  - (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
  - (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.
- (5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.
- (6) On an appeal under this section the burden of proof as to—
  - (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
  - (b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and

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- (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>M2</sup>Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid), shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.
- (7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.
- (8) [<sup>F8</sup>Subject to subsection (9) below] references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 14(1)(a) to (c) above.
- [<sup>F9</sup>(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in paragraph 9(e) of Schedule 5 to this Act.
- (10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.]

#### Textual Amendments

- F7** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, 12; S.I. 1998/2243, art. 2
- F8** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)
- F9** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)

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

- C3** 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)
- C4** 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

- I3** 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

- M2** 1979 c. 5.

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