



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

### CHAPTER II

#### APPEALS AND PENALTIES

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

#### **[<sup>F1</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>F2</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;

*Status: Point in time view as at 17/07/2012.*

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- (c) any decision by HMRC to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act, section 8, 10, 11 or 36G of the [Alcoholic Liquor Duties Act 1979](#), section 10, 13, 13ZB, 13AB, 13AD, 14, 14F, 23 or 24 of the [Hydrocarbon Oil Duties Act 1979](#), section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No 2) Act 1992 or as to the amount of duty to which a person is to be assessed under any of those provisions;
- (d) any decision by HMRC on a claim under section 137A of the Management Act for repayment of excise duty;
- (e) any decision by HMRC as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under section 2 of the Finance (No 2) Act 1992, or the amount of the drawback to which any person is so entitled;
- (f) any decision by HMRC as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the [Alcoholic Liquor Duties Act 1979](#) (duty stamps), or the amount of the repayment or credit to which any person is so entitled;
- (g) any decision by HMRC made by virtue of regulations under paragraph 4(2)(i) of that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;
- <sup>F3</sup> [ any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;]
- (h) so much of any decision by HMRC that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above;
- (i) any decision as to whether or not—
  - (i) an amount due in respect of customs duty or agricultural levy, or
  - (ii) any repayment by HMRC of an amount paid by way of customs duty or agricultural levy,
 is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;
- (j) any decision by HMRC which is of a description specified in Schedule 5 to this Act, except for any decision under section 152(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored.]

#### Textual Amendments

- F1** 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**
- F2** 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))
- F3** S. 13A(2)(ga) inserted (17.7.2012) (with effect in accordance with Sch. 25 para. 12 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 25 para. 10**

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

**C1** Ss. 13A-16 applied by 1979 c. 7, s. 7C(3) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 93\(2\)](#))

**14** <sup>F4</sup><sup>F5</sup> **Requirement for review of decision under section 152(b) of the Management Act etc]**

(1) This section applies to the following decisions [<sup>F6</sup>by HMRC] , not being decisions under this section or section 15 below, that is to say—

<sup>F7</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>F8</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

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as they are relevant to any issue to which the facts or matters not previously considered relate.

<sup>F9</sup>(6) .....

<sup>F9</sup>(7) .....

#### Textual Amendments

- F4** 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
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)

- C2** 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**)
- C3** 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)
- C4** 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)
- C5** 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)

#### Commencement Information

- I1** 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>F10</sup>14A Review out of time

- (1) This section applies if—
- (a) a person may, under section 14(2), require HMRC to review a decision, and
  - (b) the person gives notice requiring such a review after the end of the 45 day period mentioned in section 14(3).

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

#### Textual Amendments

**F10** S. 14A inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 200** (with Sch. 3 paras. 2-4)

## 15 Review procedure.

- (1) Where the Commissioners are required in accordance with <sup>[F11]</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>[F12]</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>[F13]</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.

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#### Textual Amendments

- F11** 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)
- F12** 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)
- F13** Words in s. 15(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 201(3)(b)** (with Sch. 3 paras. 2-4)

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

- C3** 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)
- C4** 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)
- C5** 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)
- C6** 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

### [<sup>F14</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

- F14** 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)

### 15B Right to require review

- (1) Any person (other than P) who has the right of appeal under section 16 against a relevant decision may require HMRC to review that decision.
- (2) The other person may not notify HMRC requiring a review of the decision if either of the following conditions is met.
- (3) Condition A is that—
  - (a) the relevant decision falls within section 14(1)(b) (decision linked to decision under section 152(b) of the Management Act about things forfeited or seized), and

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- (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

**F14** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

### 15C Review by HMRC

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

#### Textual Amendments

**F14** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

### 15D Extensions of time

- (1) If under section 15A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If under section 15B another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.

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- (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

**F14** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

### 15E Review out of time

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

#### Textual Amendments

**F14** Ss. 15A-15F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 202** (with Sch. 3 paras. 2-4)

### 15F Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 15C or 15E.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.



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

#### Textual Amendments

**F14** 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)

## 16 Appeals to a tribunal.

[<sup>F15</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—

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- (a) in a case where P is the appellant, the date of the document notifying P of the decision to which the appeal relates, or
  - (b) in a case where a person other than P is the appellant, the date the other person becomes aware of the decision, or
  - (c) if later, the end of the relevant period (within the meaning of section 15D).
- (1C) In a case where HMRC are required to undertake a review under section 15C—
- (a) an appeal may not be made until the conclusion date, and
  - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (1D) In a case where HMRC are requested to undertake a review in accordance with section 15E—
- (a) an appeal may not be made—
    - (i) unless HMRC have decided whether or not to undertake a review, and
    - (ii) if HMRC decide to undertake a review, until the conclusion date; and
  - (b) any appeal is to be made within the period of 30 days beginning with—
    - (i) the conclusion date (if HMRC decide to undertake a review), or
    - (ii) the date on which HMRC decide not to undertake a review.
- (1E) In a case where section 15F(8) applies, a notice of appeal may be made at any time from the end of the period specified in section 15F(6) to the date 30 days after the conclusion date.
- (1F) An appeal may be made after the end of the period specified in subsection (1), (1A), (1B), (1C)(b), (1D)(b) or (1E) if the appeal tribunal gives permission to do so.
- (1G) In this section “conclusion date” means the date of the document notifying the conclusion of the review]
- (2) An appeal under this section [<sup>F16</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>F17</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>F18</sup>An appeal which relates to a relevant decision falling within any of paragraphs (a) to (h) of section 13A(2), or which relates to a decision on a review of any such relevant decision, shall not be entertained if the amount of relevant duty which HMRC have determined to be payable in relation to that decision has not been paid or deposited with them unless—]
- (a) the Commissioners have, on the application of the appellant, issued a certificate stating either—

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- (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>F19</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>F20</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>F21</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>F21</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>M1</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.

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- (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>F22</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>F23</sup>section 13A(2)(a) to (h)] above.
- [<sup>F24</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>F25</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>F26</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>F27</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

- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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)
- F19** S. 16(3A) inserted (1.10.1998) by [1998 c. 36, s. 20, Sch. 2 paras. 11, 12](#); [S.I. 1998/2243](#), **art. 2**

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- F20** 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)
- F21** 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)
- F22** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F23** 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)
- F24** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F25** 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**
- F26** 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)
- F27** 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))

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

- C3** 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)
- C4** 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)
- C5** 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)
- C7** 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)**
- C8** 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

- M1** 1979 c. 5.

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