



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

#### CHAPTER IV

#### AIR PASSENGER DUTY

##### *Persons liable for the duty*

### **33 Registration of aircraft operators.**

- (1) The Commissioners shall under this section keep a register of aircraft operators.
- (2) The operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of any chargeable passengers.
- (3) A person who has become liable to be registered under this section ceases to be so liable if the Commissioners are satisfied at any time—
  - (a) that he no longer operates any chargeable aircraft, or
  - (b) that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers.
- (4) A person who is not registered and has not given notice under this subsection shall, if he becomes liable to be registered at any time, give written notice of that fact to the Commissioners not later than the end of the prescribed period beginning with that time.
- (5) Notice under subsection (4) above shall be in such form, be given in such manner and contain such information as the Commissioners may direct.
- (6) If a person who is required to give notice under subsection (4) above fails to do so, his failure shall attract a penalty under section 9 above which, if any amount of duty is then due from him and unpaid, shall be calculated by reference to that amount.

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- (7) Regulations may make provision as to the information to be included in, and the correction of, the register kept under this section.
- (8) In particular, the regulations may provide—
- (a) for the inclusion in the register of persons who have not given notice under this section but appear to the Commissioners to be liable to be registered,
  - (b) for persons who are liable to be registered—
    - (i) not to be included in, or
    - (ii) to be removed from,
 the register in prescribed circumstances,
  - (c) for the removal from the register of persons who have ceased to be so liable, and
  - (d) for the time from which an entry in the register is to be effective (which may be earlier than the time when the entry is first made in the register).

### 34 Fiscal representatives.

- (1) An aircraft operator who—
  - (a) is or is liable to be registered, and
  - (b) does not meet the requirements of subsection (3) below,
 is required to have a fiscal representative.
- (2) In this Chapter “fiscal representative”, in relation to an aircraft operator, means a person who meets those requirements and stands appointed by the operator for the purposes of this section.
- (3) A person meets the requirements of this subsection if—
  - (a) he has any business establishment or other fixed establishment in the United Kingdom, or
  - (b) if he is an individual, he has his usual place of residence in the United Kingdom.
- (4) Where any person is appointed under this section to be the fiscal representative of any aircraft operator (in this section referred to as his “principal”), then, subject to subsection (5) below [F1 and section 34A], the fiscal representative—
  - (a) shall be entitled to act on his principal’s behalf for any of the purposes of the enactments relating to duty,
  - (b) shall, subject to such provisions as may be made by regulations, secure (where appropriate by acting on his principal’s behalf) his principal’s compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of those enactments, and
  - (c) shall be personally liable in respect of any failure of his principal to comply with or discharge any such obligation or liability as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the fiscal representative and his principal.
- (5) A fiscal representative shall not be liable by virtue of subsection (4) above himself to be registered under section 33 above, but regulations may—
  - (a) require the names of fiscal representatives to be shown in such manner as may be prescribed against the names of their principals in the register kept under that section, and

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- (b) make it the duty of a fiscal representative, for the purposes of registration, to notify the Commissioners, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect.

#### Textual Amendments

**F1** Words in s. 34(4) inserted (31.7.1998) by 1998 c. 36, s. 15(2)

### [<sup>F2</sup>34A Administrative representatives.

- (1) Subject to the following provisions of this section, where—
  - (a) the appointment of any person to be the fiscal representative of an aircraft operator contains a statement that the appointment is made for administrative purposes only,
  - (b) the operator has complied with any obligations for the provision of security imposed, in relation to appointments containing such statements, by any general directions given by the Commissioners, and
  - (c) the operator is not for the time being in contravention of any requirement to provide any security that he is required to provide under section 36 below,that appointment shall have effect in accordance with subsection (2) below.
- (2) Where the appointment of any person as a fiscal representative has effect in accordance with this subsection section 34(4)(b) and (c) above shall be taken, in the case of that person—
  - (a) not to impose any requirement on the representative to secure the payment of amounts of duty which are or may become due from his principal, and
  - (b) not to make him personally liable either to pay any such amounts or in respect of any failure by his principal to pay them.
- (3) The security that may be required by general directions given by the Commissioners for the purposes of this section is any such security for the payment of amounts of duty which are or may become due from the person providing the security as may be determined in accordance with the directions.
- (4) The power of the Commissioners under section 36 below to require the provision of security shall not include any power to require a fiscal representative of an aircraft operator whose appointment has effect in accordance with subsection (2) above to provide any security for the payment of amounts of duty which are or may become due from his principal.
- (5) In this section references to an amount of duty include references to any penalty or interest that is recoverable as if it were an amount of duty, but only in so far as the penalty or interest is in respect of a failure by an aircraft operator to pay an amount of duty, or to pay such an amount before a certain time.]

#### Textual Amendments

**F2** S. 34A inserted (31.7.1998) by 1998 c. 36, s. 15(1)

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### **35 Fiscal representatives: supplementary.**

- (1) Regulations may make provision about—
  - (a) the manner in which a person is to be appointed as a fiscal representative, and
  - (b) the circumstances in which a person is to be treated as having ceased to be a fiscal representative.
- (2) If any aircraft operator who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, his failure shall attract a penalty under section 9 above.
- (3) Any failure of a fiscal representative to give any notice which he is required to give by regulations under section 34(5)(b) above shall attract a penalty under section 9 above.

### **36 Security for payment of duty.**

- (1) The Commissioners may require—
  - (a) any operator of an aircraft who is or is liable to be registered, or
  - (b) any fiscal representative,
 to provide such security, or further security, as they may think appropriate for the payment of any duty which is or may become due from the operator.
- (2) Any failure by a person to provide any security which he is required by the Commissioners to provide under subsection (1) above shall attract a penalty under section 9 above.
- (3) For the purposes of this section, a person shall not be treated as having been required to provide security under subsection (1) above unless the Commissioners have either—
  - (a) served notice of the requirement on him, or
  - (b) taken all such other steps as appear to them to be reasonable for bringing the requirement to his attention.

### **37 Handling agents.**

- (1) Where any amount of duty becomes payable at any time by the operator of an aircraft and, within the period of ninety days beginning with that time, that amount, or any other amount which becomes payable by him within the period, is not paid, the Commissioners may give notice under this section to any handling agent of his.
- (2) If any operator of an aircraft who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, the Commissioners may give notice under this section to any handling agent of his.
- (3) In this Chapter “handling agent”, in relation to the operator of an aircraft (“the principal”), means any person (other than an individual) who, under an agreement with the principal, makes arrangements for—
  - (a) the allocation of seats to passengers on aircraft operated by the principal, or
  - (b) the supervision of the boarding of such aircraft by passengers.
- (4) A notice under this section—
  - (a) may be given on the ground referred to in subsection (1) above only if the Commissioners consider it necessary to do so for the protection of the revenue, and

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- (b) may at any time be withdrawn by the Commissioners.
- (5) A notice under this section shall become effective on the date stated in it or, if later, the time when the notice is received by the handling agent and shall continue to be effective until withdrawn.
- (6) If, where a notice given to a handling agent under this section is effective—
  - (a) the allocation of seats to passengers on aircraft operated by his principal, or the supervision of the boarding of such aircraft by passengers, is carried out in pursuance of arrangements made by him under any agreement with his principal, and
  - (b) any duty payable in respect of those passengers is not paid,the handling agent shall be liable jointly and severally with his principal for the payment of the duty.

### **38 Accounting for and payment of duty.**

- (1) Regulations shall require aircraft operators who are registered or liable to be registered—
  - (a) to keep accounts for the purposes of duty in such form and manner as may be prescribed, and
  - (b) to make returns in respect of duty—
    - (i) by reference to such periods as may be prescribed or as may be allowed by the Commissioners, in relation to a particular operator, in accordance with regulations, and
    - (ii) at such time and in such manner as may be prescribed or specified.
- (2) Any person from whom any duty is due shall pay the duty at such time and in such manner as may be prescribed or specified.
- (3) In this section “specified” means specified in a notice published, and not withdrawn, by the Commissioners.
- (4) Any failure by any person to comply with regulations under this section shall, unless he is complying with the corresponding provisions of such a notice, attract a penalty under section 9 above and, in the case of any failure to keep accounts, daily penalties.

### **39 Schemes for simplifying operation of reliefs etc.**

- (1) If in the opinion of the Commissioners it is expedient to do so in the light of difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, they may in accordance with the provisions of this section prepare a scheme for the registered operator.
- (2) Any scheme so prepared shall specify the period for which it is to have effect.
- [<sup>F3</sup>(2A) A scheme may be either a standard scheme or an extended scheme.]
- (3) [<sup>F4</sup>A standard scheme] for a registered operator shall relate only to passengers—
  - (a) who are carried on chargeable aircraft operated by that operator,
  - (b) whose flights begin in the United Kingdom, and
  - (c) who are not passengers of a description mentioned in section 31(4) or (5) above;

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and in this section any reference to the relevant passengers of a registered operator is a reference to passengers who fall within this subsection in relation to him.

- (4) [<sup>F4</sup>A standard scheme] for a registered operator shall provide, in relation to passengers who are relevant passengers of his in the period specified in the scheme, for methods of calculating—
- (a) how many of those relevant passengers may be treated as passengers who are not chargeable passengers, and
  - (b) how many of them may be treated as passengers on the carriage of whom duty shall be charged
    - <sup>F5</sup>(i) at the rate mentioned in paragraph (a) of section 30(3A) above, and
    - (ii) at the rate mentioned in paragraph (b) of that provision]
- <sup>F6</sup>(4A) An extended scheme for a registered operator shall relate to all persons who are carried—
- (a) on chargeable aircraft operated by that operator, and
  - (b) in circumstances where the aircraft take off in the United Kingdom;
- and in this section any reference to persons travelling with a registered operator is a reference to persons who fall within this subsection in relation to him.
- (4B) An extended scheme for a registered operator shall provide, in relation to persons travelling with him in the period specified in the scheme, for methods of calculating—
- (a) how many of them may be treated as persons who are not passengers,
  - (b) how many of them may be treated as passengers who are not chargeable passengers, and
  - (c) how many of them may be treated as passengers on the carriage of whom duty shall be charged—
    - <sup>F7</sup>(i) [ at the rate mentioned in paragraph (a) of section 30(3A) above, and
    - (ii) at the rate mentioned in paragraph (b) of that provision]]
- (5) A calculation provided for by the scheme may be provided by reference to such factors as appear to the Commissioners to be expedient in the circumstances, including in particular information—
- (a) derived from surveys of [<sup>F8</sup>persons] carried on chargeable aircraft operated by the operator for whom the scheme is prepared, or
  - (b) relating to airports and routes used by that operator,
- whether obtained before or during the specified period.
- (6) No scheme prepared in accordance with this section shall be of any effect unless the registered operator for whom it is prepared elects in writing to be bound by it for the specified period.
- (7) If the registered operator makes such an election the scheme shall have effect for the specified period <sup>F9</sup>. . . .
- (8) [<sup>F10</sup>Where a standard scheme has effect for the specified period, this Chapter shall have effect for that period] as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4) above)—
- (a) each of the passengers who are relevant passengers of the registered operator were chargeable passengers, and
  - (b) duty were charged—

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- [<sup>F11</sup>(i) on the carriage of each of those falling within paragraph (a) of section 30(4) above at the rate mentioned in that paragraph, and  
(ii) on the carriage of each of those falling within paragraph (b) of section 30(4) above at the rate mentioned in that paragraph]
- [<sup>F12</sup>(8A) Where an extended scheme has effect for the specified period, this Chapter shall have effect for that period as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4B) above)—
- (a) each of the persons travelling with the registered operator were passengers of his,
  - (b) each of those passengers were chargeable passengers, and
  - (c) duty were charged—
- [ on the carriage of each of those falling within paragraph (a) of  
<sup>F13</sup>(i) section 30(4) above at the rate mentioned in that paragraph, and  
(ii) on the carriage of each of those falling within paragraph (b) of section 30(4) above at the rate mentioned in that paragraph]]
- (9) Regulations may make further provision with respect to schemes under this section, including in particular provision amending this section.

#### Textual Amendments

- F3** S. 39(2A) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(2)**
- F4** Words in s. 39(3)(4) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(3)(4)**
- F5** S. 39(4)(b)(i)(ii) substituted for words in s. 39(4)(b) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(a)**
- F6** S. 39(4A)(4B) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(5)**
- F7** S. 39(4B)(c)(i)(ii) substituted for words in s. 39(4B)(c) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(b)**
- F8** Word in s. 39(5)(a) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(6)**
- F9** Words in s. 39(7) omitted (1.6.1995) by virtue of S.I. 1995/1216, **reg. 2(7)**
- F10** Words in s. 39(8) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(8)**
- F11** S. 39(8)(b)(i)(ii) substituted for words in s. 39(8)(b) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(c)**
- F12** S. 39(8A) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(9)**
- F13** S. 39(8A)(c)(i)(ii) substituted for words in s. 39(8A)(c) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(d)**

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