



Finance Act 1994

1994 CHAPTER 9

PART I

CUSTOMS AND EXCISE

CHAPTER II

APPEALS AND PENALTIES

Customs and excise reviews and appeals

16 Appeals to a tribunal.

[^{F1}(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
- (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

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- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

[^{F2}(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 [^{F3}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.

[^{F4}(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) [^{F5}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—
 - (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

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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.

[^{F6}(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.]

[^{F7}(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, [^{F8}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 [^{F8}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) [^{F9}(1AA), (1AB)] [^{F10}or (1AC)] or 23(1) of the ^{M1}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.

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- (8) [^{F11}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 [^{F12}section 13A(2)(a) to (h)] above.
- [^{F13}(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 [^{F14}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.]
- ^{F15}(11)
- ^{F15}(12)

Textual Amendments

- F1** 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)
- F2** 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))
- F3** 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)
- F4** 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)
- F5** 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)
- F6** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, **12**; S.I. 1998/2243, **art. 2**
- F7** 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)
- F8** 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)
- F9** Words in s. 16(6)(c) inserted (15.9.2016 for specified purposes, 14.11.2016 in so far as not already in force) by [Finance Act 2016 \(c. 24\)](#), Sch. 16 para. 14, **Sch. 17 para. 13**
- F10** Words in s. 16(6)(c) inserted (15.9.2016 for specified purposes, 14.11.2016 in so far as not already in force) by [Finance Act 2016 \(c. 24\)](#), Sch. 16 para. 14, **Sch. 17 para. 10**
- F11** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F12** 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)
- F13** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. **16(3)(4)**
- F14** 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**
- F15** S. 16(11)(12) omitted (13.9.2018 for specified purposes, 31.12.2020 in so far as not already in force) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(1)(a), **Sch. 7 para. 143** (with savings and transitional provisions in S.I. 2020/1449, reg. 3 and 2020 c. 26, Sch. 2 para. 7(7)-(9)); S.I. 2020/1642, reg. 4(a)

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Modifications etc. (not altering text)

- C1** 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\(1\)](#)
- C2** 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](#))
- C3** 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](#))
- C4** 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](#))
- C5** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 2\(3\)\(4\)](#)
- C6** 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](#))
- C7** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 6\(4\)\(5\)](#)
- C8** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 4\(3\)\(4\)](#)
- C9** Ss. 15C-16 modified (17.7.2014) by [Finance Act 2014 \(c. 26\), Sch. 27 para. 7\(3\)\(4\)](#)
- C10** 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](#))
- C11** 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

- I1** 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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