

THE CUSTOMS ACT

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SCHEDULE

THE CUSTOMS ACT

Cap. 89	S. 8 and
Laws	2nd Sch.
23 of 1954,	19 of 1971,
30 of 1954,	29 of 1971,
44 of 1954,	7 of 1974,
66 of 1954,	S.6.,
35 of 1957,	45 of 1975,
40 of 1959,	25 of 1978,
49 of 1960.	12 of 1985
Acts	Sch.,
2 of 1963,	4 of 1991,
32 of 1964,	35 of 1997,
19 of 1967,	16 of 2000,
24 of 1968,	3 of 2001,
42 of 1969	25 of 2003,
3rd Sch,	14 of 2004,
14 of 1971	16 of 2009.

[21st July, 1941.]

1. This Act may be cited as the Customs Act.

PART 1. Preliminary

2.—(1) In this Act and in any other enactment relating to the Customs—

Interpreta-
tion.
32/1964
S.2 (b).

“agent”, in relation to the Master or owner of an aircraft or ship, includes any person who notifies the Commissioner in writing that he intends to act as the agent, and who or on whose behalf any person authorized by him signs any document required or permitted by the customs laws to be signed by an agent; provided that the owner of any aircraft or ship, if resident or represented in the Island, shall be deemed to be the agent of the Master for all the purposes of the customs laws, if no such agent be appointed;

12/1985
Sch.

“aircraft” includes balloons, kites, gliders, airships and flying machines;

“approved place of unloading” and “approved place of loading” mean, respectively, an approved place of unloading and an approved place of loading appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

“boarding station” means a boarding station appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

“burden” means net registered tonnage, or tonnage calculated in the manner prescribed by law for ascertaining net registered tonnage;

12/1985
Sch.
32/1964
S. 2 (a).
24/1968
S. 2.
45/1975
S. 2.
32/1964
S.2 (a).

“carriage” includes every description of conveyance for the transport by land of human beings or property;

“Commissioner” means the Commissioner of customs and Excise;

“Commonwealth” means the Commonwealth as defined in section 1 of the Constitution of Jamaica;

“Customs area” means a Customs area appointed by the Minister pursuant to subsection (2);

“customs laws” shall mean and includes this Act and any regulations or proclamations made thereunder and all other enactments relating to the Customs;

“document” means—

(a) any written information relating, directly or indirectly, to goods which are imported or exported;

(b) any written declaration required by the Commissioner; and

(c) any record generated in any manner whatsoever, including any record generated by an automated recording device or programme required to retrieve information in usable form;

“drawback” means a refund of all or part of any duty of customs or excise authorized by law in respect of goods exported or used in any particular manner;

“duty” includes any tax or surtax imposed by the customs or excise laws;

“entered” in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported means the acceptance and signature by the proper officer of an entry, specification, or shipping bill, and declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the proper officer by the importer or exporter of all rents and charges due to the government in respect of the goods, and, in the case of dutiable goods (except on the entry for warehousing of imported goods), the payment by the importer or exporter to the proper officer of the full duties due thereon, or else,

- where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law, or, in the case of goods for which security by bond is required on the exportation, putting on board an aircraft or ship as stores or removal of such goods, the giving of such security;
- “export” means to take or cause to be taken out of the Island or the waters thereof;
- “exporter” includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported from the Island or supplied for use as aircraft’s or ships’ stores in accordance with section 157, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft’s or ships’ stores as aforesaid;
- “goods” includes all kinds of goods, wares, merchandise and livestock;
- “import” means to bring or cause to be brought within the Island or the waters thereof;
- “importer” includes the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer;
- “Master” includes the person having or taking the charge or command of any aircraft or ship;
- “name” includes the registration mark of an aircraft;
- “obscuration” means the difference, caused by matter in solution, between the actual strength of spirits and the apparent strength as indicated by the hydrometer;
- “occupier” includes any person who signs as principal any bond in respect of any building or place used for the deposit of goods for the security thereof or of the duties thereon under the customs laws;

“offence against the customs laws” includes any act of any person contrary to the customs laws or any failure of any person to perform an act required by the customs laws to be performed by him;

4/1991
S.2.

“officer” includes any person employed in the Department of Customs and Excise, the Revenue Protection Division of the Ministry of Finance and all officers of the Constabulary Force, as well as any person acting in the aid of any officer or any such person; and any person acting in the aid of an officer acting in the execution of his office or duty shall be deemed to be an officer acting in the execution of his office or duty;

“owner of goods” includes any person who is for the time being entitled, either as owner or agent for the owner, to the possession of any goods;

“Over the Island” means above the area contained within the imaginary lines bounding the Island and the waters thereof; and if any person, goods or thing shall descend or fall or be dropped or thrown from any aircraft within such area, such person, goods or thing shall be deemed to have descended or fallen, or to have been dropped or thrown from an aircraft over the Island;

32/1964
S. 2 (a).

“port” means a port appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

“private warehouse” means a private warehouse appointed by the Minister pursuant to subsection (2);

“prohibited goods” and “restricted goods” mean respectively any goods the importation or exportation of which is prohibited or restricted by law;

“proof” means such spirits as at the temperature of 51 degrees Fahrenheit shall weigh 12/13ths of the weight of an equal measure of distilled water;

“proper officer” means any officer whose right or duty it may be to exact the performance of, or to perform, the act referred to;

“Queen’s warehouse” means any warehouse or place whatsoever for the time being occupied or used by the

- Commissioner for the deposit of goods for security thereof or of the duty due thereon; 12/1985 Sch.
- “ship” includes a steamship as hereinafter defined, and any other ship, boat, lighter, or other floating craft of any description, but does not include aircraft;
- “special store” means a special store appointed by the Minister pursuant to subsection (2); 32/1964 S. 2 (a).
- “steamship” means a ship of at least one hundred tons burden propelled by mechanical power;
- “sufferance wharf” means any sufferance wharf designated by the Minister pursuant to subsection (2); 32/1964 S. 2 (a).
- “Taxpayer Appeals Department” means the Taxpayer Appeals Department established under section 11A of the Revenue Administration Act; 3/2001 S. 2.
- “uncustomed goods” includes goods liable to duty on which the full duties due have not been paid, and any goods, whether liable to duty or not, which are imported or exported or in any way dealt with contrary to the customs laws;
- “warehoused” means deposited in a Queen’s or private warehouse;
- “warehouse-keeper” means the owner or occupier of a private warehouse;
- “waters of the Island” means any waters within a space contained within an imaginary line drawn parallel to the shores or outer reefs of the Island which appear above the surface at low-water mark at ordinary spring tides and distant twelve miles therefrom: 14/1971 S. 8 and 2nd Sch.
- Provided that where the outer limit of any part of the territorial sea of the Island does not run parallel as aforesaid at such distance, the said line shall follow and coincide with that limit.
- (2) The Minister may for the purposes of the customs laws from time to time by notice published in the *Gazette*— 32/1964 S. 2 (b).
- (a) appoint any quay, jetty, wharf or other place, including any part of an aerodrome to be an approved place of unloading or an approved place of loading at which coastwise or imported goods or goods about to be

carried coastwise or exported may be unloaded or loaded, as the case may be;

- (b) appoint any station or place to be a boarding station at which aircraft or ships arriving at or departing from any port or place shall bring to for the boarding or landing of officers;
- (c) appoint any place to be a Customs area;
- (d) appoint any place, whether on the coast or elsewhere, subject to such conditions or limitations as may be specified in the notice, to be a port; and any customs aerodrome whether within a port or not shall be deemed to be a port for aircraft;
- (e) appoint any building or place to be a private warehouse;
- (f) appoint any building in a Customs area to be a special store;
- (g) designate any place other than an approved place of loading or unloading, either generally or in a particular case, to be a sufferance wharf at which goods may be loaded or unloaded under such conditions and in such manner as he may direct.

Officers to have powers of Constables.

3. For the purpose of carrying out the provisions of the customs laws all officers shall have the same powers, authorities and privileges as are given by law to officers of the Constabulary Force.

What shall be deemed acts of Commissioner. 12/1985 Sch.

4. Every act, matter or thing required by the customs laws to be done or performed by, with, to or before the Commissioner, if done or performed by, with, to or before any officer assigned by the Commissioner for such purpose, shall be deemed to be done or performed by, with, to or before the Commissioner; and every person employed on any duty or service relating to the customs by the orders or with the concurrence of the Commissioner (whether previously or subsequently expressed) shall be deemed to be the officer for that duty or service; and every act required

by law at any time to be done by, with, to or before any particular officer nominated for such purpose, if done by, with, to or before any person appointed by the Commissioner to act for such particular officer, shall be deemed to be done by, with, to or before such particular officer; and every act required by law to be done at any particular place within any port, if done at any place within such port appointed by the Commissioner for such purpose, shall be deemed to be done at the particular place so required by law.

12/1985
Sch.

PART II. *Duties, Prohibitions, Drawbacks and Refunds of Duty*

5.—(1) It shall be lawful for the House of Representatives from time to time by resolution to impose import or export duties of customs upon any goods whatsoever which may be imported into or exported from the Island, and to revoke, reduce, increase or alter any such duties, and to provide for the importation or exportation of any goods without payment of customs duty thereon.

Customs
duties.

(2) Notwithstanding anything to the contrary no import duty shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the University of the West Indies or the Council of Legal Education and shown to the satisfaction of the Commissioner to be required for the use of the said University or Council.

Exemption
from import
duties.

2/1963
S. 2.
7/1974
S. 2.
12/1985
Sch.

6. Notwithstanding anything contained in section 5 the Minister may by order (a) increase or reduce any import or export duty of customs, or (b) impose new import or export duties of customs, and from the date of publication of such order in the *Gazette*, and until the expiry of such order, the duties specified in such order shall be payable in lieu of any duties payable prior thereto :

Minister
may make
interim
order.

Provided that where any duty is reduced by any such order, the person by whom any goods liable to the reduced

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duty are entered shall pay the reduced duty and in addition shall deposit with the proper officer the difference between the duty payable prior to the date of the order and the duty payable under the order until the order expires as herein-after provided.

Interim order to be confirmed, amended or revoked by House of Representatives.

7. Every order issued by the Minister under section 6 shall after four days and within twenty-one days from the date of its first publication be submitted to the House of Representatives and the House of Representatives may by resolution confirm, amend or revoke such order, and upon publication of the resolution of the House of Representatives in the *Gazette* the resolution shall have effect and the order shall then expire. If the order be not submitted within the said period of twenty-one days to the House of Representatives for confirmation it shall *ipso facto* expire.

Excess duty to be refunded when order expires

8. So much of the duties as shall have been paid under the order of the Minister as may be in excess of the duties payable immediately after the expiry of such order shall be repaid to the persons who paid the same.

Refund of deposit.

9. So much of any sums which have been deposited in accordance with the proviso to section 6 as, together with the duty paid, shall be equal to the duties payable after the expiry of the order, shall be brought to account by the Commissioner as duties of customs, and the balance, if any, shall be refunded to the depositor.

12/1985 Sch.

Restriction on delivery of goods to counteract evasion.

23/1954

S. 2.

32/1964

S. 3

12/1985

Sch.

10. The Minister may by order authorize the Commissioner, during any period named in the order not exceeding three months, to refuse to allow the delivery of goods for use in this Island from any aircraft, ship, Customs area or warehouse on payment of duty in cases where deliveries are demanded of amounts exceeding the deliveries which appear to the Commissioner to be reasonable deliveries in the circumstances.

11. It shall be competent for the Minister upon application by the importer or exporter to remit or refund in whole or in part any customs duty whenever he shall deem it expedient so to do and any such remission or refund may be subject to such special conditions as the Minister may see fit to impose.

Minister
may remit
duties.
19/1967
S. 2.

12. *[Repealed by Act 45 of 1975.]*

13. *[Repealed by Act 45 of 1975.]*

14. All goods deposited in any warehouse without payment of duty on the first importation thereof, or which may be imported or exported and shall not have been entered for use within the Island or for exportation as the case may be, shall, upon being entered for use within the Island or for exportation as the case may be, be subject to such duties as may be due and payable on the like sort of goods under the customs laws in force at the time when the same are entered save in cases where special provision shall be made to the contrary.

Time of
entry to
govern duty
payable.

15.—(1) Where by entry, bond, removal of goods or otherwise, any obligation has been incurred for the payment of duties of customs, such obligation shall be deemed to be an obligation to pay all duties of customs which may become legally payable, or which are made payable or recoverable under the customs laws, and to pay the same as the same become payable.

Effect of
obligation
to pay duty.

(2) When any duty has been short levied or erroneously refunded, the person who should have paid the amount short levied, or to whom the refund has erroneously been made, shall pay the amount short levied or repay the amount erroneously refunded, on demand being made by the Commissioner.

12/1985
Sch.

Duty on
goods re-
imported.

12/1985
Sch.

12/1985
Sch.

16. Where any goods, whether made or produced within this Island or not, being of a class or description liable to any import duty of customs are re-imported into and entered for use within the Island after exportation therefrom, and it is shown to the satisfaction of the Commissioner that any duty of customs or excise chargeable in respect of the goods prior to their exportation was duly paid, either prior to exportation or at any subsequent time, and either that no drawback of any such duty was allowed on exportation, or that any drawback so allowed has been repaid to the Commissioner, then—

- (a) if it is further shown as aforesaid that the goods have not been subjected to any process abroad, the goods shall be exempt from any such duty when the same are entered for use within the Island, after re-importation, unless the rate of duty of excise or customs, as the case may be, chargeable on goods of the same class or description at the time when the same are entered for use within the Island after re-importation shall exceed the rate paid on the said goods as a duty of excise or on first importation and entry, as the case may be, in which case such goods shall be chargeable with duty at a rate equal to the difference between the rate at which the duty previously paid was calculated and the rate in force at the date when such goods are entered for use within the Island after re-importation;
- (b) if the goods at the time when the same are entered for use within the Island after re-importation are of a class or description liable to an import duty *ad valorem*, and it is further shown as aforesaid that the goods have been subjected to a process of repair, renovation or improvement abroad, but that their form or character has not been changed,

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such goods shall be chargeable with duty as if the amount of the increase in the value of goods attributable to the process were the whole value thereof, and, where any sum has been contracted to be paid for the execution of the process, the sum shall be *prima facie* evidence of that amount, but without prejudice to the powers of the Commissioner under the customs laws as to the ascertainment of the value of the goods for the purpose of assessing duty thereon *ad valorem* :

12/1985
Sch.

Provided that if the rate of duty of excise or customs, as the case may be, chargeable on goods of the same class or description at the time when the same are entered for use within the Island after re-importation shall exceed the rate paid on the said goods as a duty of excise or on first importation and entry, as the case may be, then in such case, in addition to the *ad valorem* import duty chargeable hereunder according to the amount of the increase in the value of the goods attributable to the process, such goods shall be chargeable with additional excise or customs duty calculated in the manner set out in paragraph (a), as if such goods had not been subjected to any process of repair, renovation or improvement abroad.

17.—(1) If any dispute shall arise as to whether any or what duty is payable on any goods imported into or exported from the Island, the importer, consignee or exporter, or his agent, shall deposit in the hands of the Commissioner the duty demanded by him.

In case of
dispute,
importer to
deposit the
duty
demanded.
32/1964
S. 6 (a)
(b) (c).
12/1985
Sch.

(2) In the case of any such dispute the importer, consignee or his agent, after having first deposited the duty in accordance with subsection (1) may, within three months

29/1971
2nd Sch.

12/1985
Sch.

after such deposit, apply to the Commissioner, by notice of objection in writing, to review and revise the assessment of duty on the goods, and such application shall state precisely the grounds of objection.

12/1985
Sch.

(3) On the receipt of the notice of objection referred to in subsection (2), the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the assessment and to produce all books or other documents in his custody or under his control relating to such assessment, and may, by notice, summon any person who he thinks is able to give evidence respecting the assessment to attend before him, and may examine such person on oath or otherwise.

12/1985
Sch.

(4) Any person who without lawful excuse refuses or neglects to attend or to give evidence in pursuance of notice served on him under subsection (3) or to produce any books or documents which he is required to produce under the said subsection, or who refuses to answer any lawful question touching the matters under consideration, or who knowingly or wilfully gives any false evidence before the Commissioner, shall be guilty of an offence against this Act.

12/1985
Sch.

(5) Where a person who has objected to an assessment of duty subsequently agrees with the Commissioner as to the amount at which the assessment should be made, the assessment shall be amended accordingly but, in any other event, the Commissioner shall give notice in writing to the person of his decision in respect of the objection.

(6) On payment of the deposit, as required by this section, and on the passing of a proper entry or shipping bill for such goods by the importer, exporter, consignee, or agent, the Commissioner shall cause delivery or permit shipment thereof, as the case may be.

12/1985
Sch.

(7) All such deposits shall be paid by the Commissioner to the Accountant-General, and, in case no such proceedings shall be brought within the time limited for that purpose, such deposit shall be retained and paid into the Consolidated Fund in the same manner as if it had been originally paid and received as the duty due on such goods; and in case of such proceedings, if it shall be determined that the duty so deposited was not the proper duty, but that a less duty was payable, the difference between the deposit and the duty found to be due, or the whole deposit, as the case may require, shall be returned to such importer, exporter, consignee or agent and in like manner where in case of such proceedings it is determined that the duty so deposited was less than the proper duty the difference between the deposit and the duty found to be due shall be recovered and paid into the Consolidated Fund.

12/1985
Sch.

32/1964
S. 6(d).

18.—(1) Any person (hereinafter in this Act referred to as the “objector”) who has disputed an assessment by notice of objection under section 17 of this Act and who is dissatisfied with the decision of the Commissioner therein may appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner’s decision.

Appeals to
Revenue
Court.

12/1985
Sch.

(2) The onus of proving that the assessment complained of is erroneous shall be on the objector.

L.N.
8B/2002

(3) An objector who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

^{3/2}
S. 3 (v).

18A.—(1) The provisions of this section apply in relation to appeals under sections 18 and 19.

Provisions
relating to
appeals.
L.N.
8B/2002.

(2) Notwithstanding the provisions of sections 18(1) and 19(4)(b), the Taxpayer Appeals Department upon being satisfied that owing to absence from Jamaica, sickness or other reasonable cause, the objector or importer, as the case may be, was prevented from making the appeal within the period specified therein, shall extend the period as may be reasonable in the circumstances.

(3) Upon an appeal under section 18(1) or 19(4)(b), the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.

(4) An appeal under section 18(3) shall be limited to the grounds stated in the notice of objection under section 17, but the Revenue Court may, in its discretion, permit the grounds of appeal to be amended.

Value.
3/2001
S. 4.
Schedule.

19.—(1) Where, pursuant to the provisions of any enactment for the time being in force, imported goods are required to be entered, the value of those goods shall be determined in accordance with the provisions of the Schedule.

(2) Nothing in the Schedule shall be construed as restricting or calling into question the right of the Commissioner to satisfy himself as to the truth or accuracy of any document or information presented to him for customs valuation purposes.

(3) The Commissioner shall, on a written request by the importer, give reasons in writing as to how the customs value of the importer's goods was determined.

(4) On receipt of the reasons referred to in subsection (3), an importer may—

(a) request a review of the valuation; and

(b) if dissatisfied with the review, appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner's decision.

(5) An importer who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

(6) Where, in determining the value of goods under subsection (1), it is necessary to establish the equivalent in Jamaican currency of any other currency—

(a) the rate of exchange shall, subject to paragraph (b), be the last spot market weighted average selling rate as determined by the Bank of Jamaica prior to the date of report of the aircraft or ship;

- (b) if the Commissioner gives permission for goods to be entered before the date of report as aforesaid, the rate of exchange shall be the spot market weighted average selling rate as determined by the Bank of Jamaica on the day the relevant entry is first accepted by the proper officer.

(7) The Commissioner may, in respect of goods conveyed into the Island by air, reduce the amount of the freight charges to be added to the value of the goods for purposes of assessment of duty to such amount, not being less than one-fourth of the freight charges actually payable on such goods, as he may think fit.

(8) The Commissioner may, within two years from the date of entry of imported goods, adjust the value accepted by an Officer at the date of entry of such goods, where he discovers that the value accepted by the Officer was incorrect—

- (a) based on new information concerning the goods; or
(b) for any other reason.

(9) Where the value has been adjusted pursuant to subsection (8), the Commissioner shall demand the additional duty payable or shall refund the duty overpaid based upon the new value.

(10) The Minister may, by order, subject to negative resolution of the House of Representatives, amend the Schedule. Schedule.

(11) The Minister may, by order, subject to negative resolution of the House of Representatives—

- Schedule.
- (a) suspend the operation of any provision of the Schedule or the operation of the Schedule in relation to any category of goods, for such period as may be specified in the order; and
 - (b) specify how the value of any goods or category of goods to which the suspension relates shall be determined during that period.

Obligation to secrecy. **19A.—**(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all documents and information relating to the valuation or assessment of customs duties in respect of imported goods; and
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Notwithstanding any provision contained in any enactment, every person referred to in subsection (1) having possession of or control over any document or information who communicates or attempts to communicate any such information or anything contained in such document to any person—

- (a) other than the Commissioner or an officer of the Customs Department;
 - (b) without the consent in writing of the person, government or body which provided the document or information; or
 - (c) otherwise than for the purposes of this Act,
- commits an offence under this Act and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding nine months or to both such fine and imprisonment.

20.—(1) If any article is enumerated in the tariff, or can reasonably be classified under two or more names, headings or descriptions, and there is a difference of duty, the highest duty provided shall be charged and collected thereon.

Duty payable on classification at highest rate.

(2) Goods containing any article liable to duty as a part or ingredient thereof shall be liable to duty at the rate payable on such part or ingredient, and any goods composed of more than one article liable to duty shall be liable to duty at the rate payable on the article charged with the highest rate of duty:

Duty on composite goods.

Provided that the highest rate shall not be exacted in cases where the Commissioner in his discretion decides that the goods contain only a negligible proportion of the article liable to the highest rate:

12/1985 Sch.

Provided also that in no case shall any less duty be charged on any such goods than the duty due thereon when considered as a whole without regard to their contents.

21. If any article subject to the payment of specific duty is imported in any package intended for sale, or of a kind usually sold with the goods when the same are sold retail, and marked or labelled, or commonly sold, as containing, or commonly reputed to contain, a specific quantity of such article, then such package shall be deemed to contain not less than such specific quantity.

Duty chargeable on reputed quantity.

22. If any article subject to the payment of duty according to the weight thereof is imported in any package intended for sale, or of a kind usually sold with the goods when the same are sold retail, and such package is not marked or labelled, or is not in the opinion of the Commissioner commonly sold as containing,

On gross weight in certain cases.

12/1985 Sch.

12/1985
Sch.

or commonly reputed to contain, a specific quantity of such article, and the importer is not able to satisfy the Commissioner as to the correct net weight, the duty thereon shall be calculated according to the gross weight of such package and its contents.

Minister
may fix
standard
contents for
packages
containing
liquids.

23. It shall be lawful for the Minister by notice in the *Gazette* to specify, in gallons or fractions of a gallon, standard capacities for packages containing goods liable to duties according to the liquid measurement thereof, in all cases where, in his absolute discretion, he shall consider that such packages, being of sizes within limits to be specified in the notice, are reputed to be, or are sold as packages of standard sizes, whether or not any statement of the actual contents is contained on any label or other attachment to or part of such package, and thereupon all packages having capacities within the limits specified in any such notice shall be deemed to contain the standard capacity specified in the notice in each case.

Duties, &c.,
to be pro-
portionate to
quantity or
value.

24. All duties, rates, charges and drawbacks imposed and allowed according to any specified quantity, or any specified value, or any particular description of package, shall be deemed to apply in the same proportion to any greater or less quantity or value, or any other description of package, and shall be paid and received in any currency being legal tender in the Island, and according to the weights and measures, established by the laws of the Island.

Abatement
of duty.

25. No claim for any abatement of duty in respect of any goods imported into the Island shall be allowed on account of damage, unless such claim shall be made on the first examination thereof, nor unless it shall be proved to the satisfaction of the Commissioner that such damage was sustained before the delivery thereof out of the care of the Commissioner.

12/1985
Sch.

26. All goods derelict, jetsam, flotsam and wreck brought or coming into the Island, and all droits of Admiralty sold in the Island, shall at all times be subject to the same duty as goods of the like kind on importation into the Island are subject, unless it shall be shown to the satisfaction of the Commissioner that such goods are damaged.

Derelict, &c., goods liable to full duty unless damaged. 12/1985 Sch.

27. Subject to the provisions of sections 25, 28 and 29 the damage sustained by any goods shall be assessed by the Commissioner, who shall allow abatement of the duty in proportion to such damage.

Damage to be assessed by Commissioner. 12/1985 Sch.

28. No claim for abatement of duty on account of damage shall be allowed in respect of tobacco, cigars, cigarillos, cigarettes, wine or spirits.

No abatement on certain goods.

29. No claim for abatement of duty on account of damage shall be allowed in respect of imported goods (not being goods derelict, jetsam, flotsam or wreck brought or coming into the Island, or droits of Admiralty sold in the Island) except on proof to the satisfaction of the Commissioner that the carrier or insurer of the goods has made an allowance to the importer in respect of the damage. In any such case the abatement shall not exceed such proportion of the duty as the amount of the allowance made bears to the value of the goods undamaged, calculated in accordance with section 19.

Qualification as to abatement.

12/1985 Sch.

30. No liquor containing more than forty-two *per centum* of proof spirit shall be deemed wine; and no liquor containing more than twenty *per centum* of proof spirit shall be deemed beer, ale, stout or porter. All liquor containing more than forty-two *per centum* of proof spirit, and all liquor, other than wine, containing more than twenty *per centum* of proof spirit, shall be deemed spirits.

Limitations as to wine and beer.

Strength of
spirits.

31.—(1) In ascertaining the strength of any spirit, any obscuration shall be determined and allowed for.

12/1985
Sch.

(2) The certificate of the Commissioner or Government Chemist as to the strength of any liquids containing alcohol shall be *prima facie* evidence of the strength thereof.

Goods used
contrary to
purpose for
which im-
ported.
19/1971
S. 2.

32.—(1) If any goods which are ordinarily liable to duty at a given rate are allowed by law to be, and are in fact, entered at a lower rate of duty, or free of duty, on any special conditions, or for use for some special purpose, or because they are the property of or intended for use by some particular person or functionary, and if such conditions are not observed, or the goods are at any time within three years of the date of importation thereof used for any other than the specified purpose, or, being goods entered as aforesaid because they are the property of or intended for use by some particular person or functionary, are sold or transferred to any other person, such goods, unless the full duties thereon shall have been paid, shall be forfeited, and the importer and any person who shall be knowingly concerned in the use of such goods contrary to such conditions, or for some purpose other than that specified, or in any way contrary to this section shall each incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

35/1997
S. 2.

19/1971
S. 2.

(2) Where goods are delivered to any person with any such concession on duty as is referred to in subsection (1) the Commissioner may, subject to such terms and conditions as he may think fit, permit the sale or transfer of the goods to another person who, if the goods were originally delivered to him, would have been entitled to the like concession on duty; and thereupon, subsection (1) and section 33 shall apply *mutatis mutandis* in relation to that

12/1985
Sch.

other person as they applied in relation to the person to whom such goods were originally delivered.

33. The importer of any such goods as aforesaid shall, on demand, produce them to any officer or otherwise account for them to the satisfaction of the Commissioner, within such period of three years aforesaid, and if he shall fail to produce such goods, or otherwise account for the same as aforesaid, he shall incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

Penalty for not producing goods. 12/1985 Sch.

35/1997 S. 2.

34. The provisions of sections 32 and 33 shall not apply to goods imported by or for the use of the Government, and sold or transferred by Government order.

Saving as to goods of Government.

35. The Commissioner may give permission to any person to import any goods without payment of duty thereon, upon being satisfied that such goods are so imported for temporary use only. Such permission shall be subject to the provisions of section 37 and to the following conditions—

Goods imported for temporary use. 12/1985 Sch.

(a) that in the case of goods imported temporarily under temporary importation papers issued in accordance with the terms of the International Customs Convention on Touring, 1949, or any other international convention concerning customs facilities for touring which may from time to time be in force in this Island—

40/1959 S. 4.

(i) such temporary importation papers shall be sufficient security for the payment of duty and no other security or deposit shall be demanded by the Commissioner; and

12/1985 Sch.

(ii) such goods shall be exported within the period specified in the Convention;

12/1985
Sch.

(b) that in all other cases the person to whom such permission is given shall deposit in the hands of the Commissioner the amount of the duty on such goods or else give security therefor, at the election of the Commissioner and such goods shall be exported—

- (i) within six months of the date of permission where such goods are commercial samples; and
- (ii) within three months of the date of permission where such goods are not commercial samples.

Disposal of
deposit.
35/1957
S. 3.
40/1959
S. 5.
12/1985
Sch.

36. If any goods imported under the provisions of section 35 are not exported within the time specified in that section in relation to such goods, and are not of the kind described in paragraph (a) of that section, the deposit in the hands of the Commissioner shall be forfeited, or, if security has been given as aforesaid, then the importer shall pay to the Commissioner the full duties on such goods. If such goods are exported as aforesaid such deposit shall be refunded, or the security cancelled :

12/1985
Sch.

Provided that the Commissioner may, in his discretion, and on provision of additional security where he so requires, allow any additional period where he is satisfied that the articles are the *bona fide* property or *bona fide* in the use of any person not ordinarily resident in the Island who is on a visit to the Island and who either imported the goods for temporary use or has been the sole user of the goods since they were so imported.

19/1967
S. 4.

Restrictions
and condi-
tions on
importation
for tem-
porary use.
19/1967
S. 5.

37. The Minister may by regulations—

- (a) prohibit the importation under section 35 of any goods specified in the regulations;

- (b) without prejudice to the provisions of section 35, prescribe the conditions subject to which goods or any class or description of goods may be imported under section 35; and
- (c) prescribe the proportion of duty which shall be payable on such goods specified in the regulations as are imported under section 35.

38.—(1) Where any new import duty of customs is imposed, or where any import duty of customs is increased, and any goods in respect of which the duty is payable are delivered on or after the day on which the new or increased duty takes effect in pursuance of a contract made before that day, the seller of the goods may, in the absence of agreement to the contrary, recover, as an addition to the contract price, a sum equal to any amount paid by him in respect of the goods on account of the new duty or increase of duty, as the case may be.

Contract prices of imported goods may be adjusted to meet change in duty.

(2) Where any import duty of customs is repealed or decreased, and any goods affected by the duty are delivered on or after the day on which the duty ceases or the decrease in the duty takes effect in pursuance of a contract made before that day, the purchaser of the goods, in the absence of agreement to the contrary may, if the seller of the goods has had, in respect of those goods, the benefit of the repeal or decrease of the duty, deduct from the contract price a sum equal to the amount of the duty or decrease of duty, as the case may be.

(3) Where any addition to or reduction from the contract price may be made under this section on account of any new or repealed duty, such sum as may be agreed upon, or, in default of agreement, determined by the Commissioner as representing, in the case of a new duty, any new expenses incurred, and, in the case of a repealed

12/1985 Sch.

[The inclusion of this page is authorized by L.N. 87/1986]

duty, any expenses saved, may be included in the addition to or deduction from the contract price, and may be recovered or deducted accordingly.

Minister
may prohibit
importation,
carriage
coastwise or
exportation.
32/1964
S. 12 (a).

39. It shall be lawful for the Minister from time to time by order to prohibit the importation, carriage coastwise or exportation of any goods whatsoever, and any such order may prohibit importation, carriage coastwise or exportation until the revocation thereof, or during such period as may be specified therein, and may either absolutely prohibit importation, carriage coastwise or exportation, or may prohibit importation, carriage coastwise or exportation except on compliance with any conditions which may be specified in the order, or importation from or exportation to any particular place named in the order.

Goods pro-
hibited to be
imported.
32/1964
S. 12 (a).

40. Until revoked by order under section 39 the following goods are prohibited to be imported—

- (i) agricultural implements such as are prohibited to be imported under the Plants (Protection from Disease) Act;
- (ii) all goods which if sold would be liable to forfeiture under the Merchandise Marks Act, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be a name or trade mark of any manufacturer, dealer or trader in the Commonwealth unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced;
- (iii) all goods of a kind prohibited to be imported into the United Kingdom by order made under the Anthrax Prevention Act, 1919 (United Kingdom);

32/1964
S. 9.

- (iv) animals—such animals and carcasses of animals as are prohibited to be imported under the provisions of the Animals (Diseases and Importation) Act, and any enactments amending the same, and other animals the importation of which is prohibited by law, except with the written permission of the Minister or any person authorized by him to grant such permission;
- (v) arms and ammunition, except with the written permission of the Commissioner; 12/1985
Sch.
- (vi) brandy of a lower strength than thirty degrees *per centum* under proof, unless it shall be proved to the satisfaction of the Commissioner that such brandy has been matured for a period of not less than ten years, and unless such brandy is imported in bottles securely sealed, and is intended for private use and not for sale; 12/1985
Sch.
- (vii) clocks and watches or any other article of metal impressed with any mark or stamp representing or in imitation of any legal Commonwealth assay, mark, or stamp, or purporting by any mark or appearance to be of the manufacture of any part of the Commonwealth, such clocks, watches or other articles not being of the manufacture of such part of the Commonwealth; 32/1964
S. 9.
- (viii) coin—viz.: base or counterfeit coin of any country;
- (ix) coin—imitation and foreign, of a kind which is prohibited by law to be imported into the United Kingdom;

- (x) coin, silver, of the realm, or any money purporting to be such, not being of the established standard in weight and fineness;
- (xi) drugs—opium and other dangerous drugs such as are prohibited to be imported under the Dangerous Drugs Act;
- (xii) essences of brandy or whisky or flavouring essences except the same be of a brand approved by the Minister;
- (xiii) indecent or obscene prints, paintings, photographs, cinematograph films, lithographs, engravings, books, cards, or written communications, or any indecent or obscene articles whether similar to the above or not, and any parcels, packages or packets having thereon or on the cover thereof, any words, marks, or designs which are grossly offensive or of an indecent or obscene character;
- (xiv) oil—edible, except under licence of the Minister;
- (xv) oil of gin or cognac except the same be of a brand approved by the Minister;
- (xvi) plants, bulbs, seeds, cuttings, etc., such as are prohibited to be imported under the Plants (Protection from Disease) Act;
- (xvii) [*Repealed by Act 45 of 1975.*]
- (xviii) rum colouring—solutions or liquid extracts, also dyes or solid substances used for colouring rum;
- (xix) spirits (not being rum, cordials or perfumes or medicinal spirits), and wine, unless speci-

32/1964
S. 12 (a).

32/1964
S. 12 (a).

cally reported as such, and unless in aircraft, or in ships of thirty tons burden at least, and in casks or other vessels capable of containing liquids, each of such casks or other vessels being of the size or content of nine gallons at the least or unless in glass or stone bottles, properly packed in cases, or in demijohns, each case or demijohn containing not less than one gallon;

- (xx) stamps—fictitious stamps, and any die, plate, instrument or material capable of making any such stamps;
- (xxi) sugar except under licence of the Sugar Control Board;
- (xxii) such other articles not hereinbefore mentioned, the importation of which is prohibited or may be prohibited from time to time, by law.

41. Until revoked by order under section 39, the following goods are prohibited to be exported—

Goods prohibited to be exported.

- (a) arms, ammunition and military and naval stores, except with the written permission of the Minister;
- (b) spirits and wines, except subject to any conditions contained in section 40 in relation to the importation thereof.

32/1964
S. 12 (a).

42. It shall be lawful for the Commissioner to permit the importation or exportation of spirits and wines in smaller ships and in smaller quantities than are prescribed in sections 40 and 41 or any order made under section 39 under such conditions and subject to such regulations as he may prescribe, and subject to such additional duties, if any, as may be fixed by the House of Representatives.

Savings as to spirits and tobacco.
12/1985
Sch.
32/1964
S. 12 (b).

Savings as to
transit goods
and stores.

43. Goods imported in transit or as the *bona fide* stores of any aircraft or ship shall not be deemed to be goods prohibited to be imported or exported unless such goods—

- (a) being in transit are of a description included in paragraphs (ii), (iii), (vii), (viii), (ix), (x), (xiii), (xix), (xx) of section 40; or
- (b) being the *bona fide* stores of any aircraft or ship, are of a description included in paragraphs (ii), (iii), (vii), (viii), (ix), (x), (xiii), or (xx) of section 40; or
- (c) are expressly prohibited to be imported in transit or as aircraft's or ships' stores, in any regulation made under the customs laws, or in any law prohibiting the importation of any goods.

32/1964
S. 12(c).

Prohibitions
elsewhere
provided.

44. The provisions of sections 39 to 43 shall be additional to the provisions of section 143, and to any provisions of any other enactment prohibiting the importation, carriage coastwise or exportation of any goods.

Minister
may direct
granting of
drawbacks.

45.—(1) It shall be lawful for the Minister from time to time by order to direct on what goods a drawback of the whole or any part of the duties paid on the importation thereof may be granted, and the conditions under which such drawback shall be allowed.

(2) Orders made under subsection (1) whereby provision is made for granting a drawback of the duties paid otherwise than on the exportation or shipment as stores of any goods shall not have any force or effect until they have been approved by the House of Representatives and published in the *Gazette*.

(3) Notwithstanding anything hereinbefore contained in this section all drawbacks payable under any former law shall be paid or allowed under this Act until cancelled by direction of the Minister under this section.

46. Every sum of money which shall be due upon any debenture, certificate or other instrument for the payment of money out of the duties of customs shall be paid by the Commissioner on the proper debenture certified by the proper officer.

Certification of debenture.
12/1985 Sch.

47. The owner of any goods on which drawback is claimed shall make and subscribe a declaration on the debenture that the conditions under which drawback is allowed have been fulfilled, and, in the case of goods exported or put on board an aircraft or ship for use as stores, that such goods have been actually exported or put on board for use as stores, as the case may be, and have not been returned and are not intended to be returned to the Island and that such owner at the time of entry of such goods was and continues to be entitled to the drawback thereon.

Declaration by owners of goods exported on drawback.

48. The Commissioner may require the owner to produce satisfactory evidence of the landing or disposal of any goods before certifying any debenture.

Evidence of disposal of goods.
12/1985 Sch.

49. No debenture for any drawback shall be paid after the expiration of two years or such further time as the Minister may allow from the date of entry of any goods for drawback, or, in the case of goods exported or put on board an aircraft or ship for use as stores, from the date of putting the same on board the exporting or using aircraft or ship.

Time limit for debenture payment.

50. The Commissioner shall return any money which shall have been overpaid as duties of customs at any time within two years after such overpayment, on the proper document for such overpayment being certified by the proper officer.

Refund of duties paid in error.
12/1985 Sch.

**PART III. *Arrival and Report of Aircraft and Ships,
Landing of Passengers and Unloading, Removal
and Delivery of Goods***

Procedure
on arrival.

12/1985
Sch.

12/1985
Sch.

14/2004
Sch.

Commis-
sioner may
direct moor-
ing and
discharge.
12/1985
Sch.

51. If any aircraft or ship arriving in the Island or the waters thereof (a) shall not come to some port therein, or to such other place as may be allowed by the Commissioner in any special circumstances, without touching at any other place in the Island or (b), on arriving at any such port or place, shall not come as quickly up to the proper place of mooring or unloading as the nature of the port or place will admit, without touching at any other place, or (c), in proceeding to such proper place, shall not bring to at the station appointed by the Minister by notice in the *Gazette* for the boarding of aircraft or ships, or (d), after arriving at such proper place shall depart therefrom except directly to some other place of mooring or unloading approved of by the proper officer, or, with the authority of the proper officer, directly to some other port or to some place allowed by the Commissioner in any special circumstances as aforesaid in the Island, or directly on any flight or voyage to a place outside the Island in accordance with the provisions of the customs laws, or, (e), after departing as aforesaid on any flight or voyage to a place outside the Island shall bring to within the Island or the waters thereof, unless in accordance with the customs laws, or with the permission of the proper officer, or for some cause which the Master shall explain to the satisfaction of the Commissioner, then in every such case the Master of such aircraft or ship shall incur a penalty of one hundred thousand dollars.

52. The Commissioner may, subject to any other authority provided by law give reasonable directions at what particular part of any port or other place aircraft or ships shall moor or shall discharge their cargo.

53. Any officer on duty may board any aircraft or ship within the Island or the waters thereof and stay on board for any period, and shall have free access to every part, with power to secure any part by such means as he shall consider necessary, and to examine any goods, and to require any goods to be unloaded, and removed for examination, or for the security thereof, or to unload and remove such goods at the expense of the Master or owner, or the agent of either, and to examine any goods in course of being unloaded or removed, or when unloaded or removed, and to lock up, seal, mark or otherwise secure any goods on board such aircraft or ship.

Officer may board aircraft or ship.

54. If any officer acting under the provisions of section 53 shall find that there be not free access to any place or container or any box or chest, or if the keys of any such place, container, box or chest, if locked, be withheld, such officer may open any such place, container, box or chest in any manner; and if any goods be found concealed on board, they shall be forfeited.

Officer may open if access not free.
16/2000
S. 2(a)(b).

55. If the officer shall place any lock, mark or seal upon any goods on board an aircraft or ship or any place, container or package in which the same may be, and such lock, mark or seal be wilfully opened, altered or broken before due delivery of such goods, or within the Island or the waters thereof, except with the authority of the proper officer, or if any of such goods be secretly conveyed away, or if any goods, place, container or package after having been secured by the officer be opened within the Island or the waters thereof, except with the authority of the proper officer, or if the officer shall require any goods to be unloaded and removed for examination or for the security thereof and such goods shall

Penalty for interfering with seal. &c.
16/2000
S. 3(a).

16 2000
S. 3(b).

not be unloaded and removed forthwith as required by the officer, the Master of such aircraft or ship shall incur a penalty of two hundred thousand dollars.

16/2000
S. 3(c).

Penalty for interfering with goods, while in any port, etc.
16/2000
S. 4.

55A.—(1) A person commits an offence if, without lawful excuse or the permission of the proper officer, he interferes with any goods while those goods are in, or being conveyed between, any port, customs area, container station, inspection sight, wharf or other place within the Island or the waters thereof.

(2) For the purposes of subsection (1) a person interferes with goods if he—

- (a) breaks into or opens any container, package, place or vehicle in which goods are kept or conveyed or to be conveyed;
- (b) removes any goods from such container, package, place or vehicle or inserts therein any other goods;
- (c) tampers with any lock, mark or seal on or affixed to any such container, package, place or vehicle.

(3) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars, and the Resident Magistrate may order that such goods be forfeited.

Goods unlawfully discharged.

56. If any officer shall board any aircraft or ship and find any goods thereon, and after leaving such aircraft or ship, such officer, or any other officer shall board such aircraft

or ship, and such or any part of such goods shall no longer be on board, and the Master is unable to give a due account of the lawful discharging of the same, the Master of such aircraft or ship shall incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

35/1997
S. 2.

57. If any officer shall be informed or have reason to suppose that any person on an aircraft or ship, or any person who shall have landed from an aircraft or ship, or any person who the officer may suspect has received any goods from any such person, is carrying or has any uncustomed or prohibited goods about his person, such officer may search such person; and if any such person shall, upon being questioned by any officer whether he has any goods obtained outside the Island upon his person, or in his possession, or in his baggage, refuse to answer or deny having the same, and any such goods shall be discovered to be or to have been upon his person or in his possession, or in his baggage, such goods shall be forfeited. No officer shall be liable to any prosecution or action at law on account of any search made in accordance with the provisions of this section.

Search of
persons.

58. Before any person shall be searched he may require to be taken with all reasonable despatch before a Justice or the Commissioner or other superior officer, who shall, if he sees no reasonable cause for search, discharge such person, but if otherwise, direct that he be searched.

Certain
officers may
not search
without
special
authority.
12/1985
Sch.

59. A female shall not be searched except by a female.

Search of
female.

60. If upon boarding any ship not exceeding one hundred

Control of
small craft.

tons burden any officer shall find any goods of which the Master shall not be able to give a satisfactory account, and if such officer shall suspect that such goods are being or have been or are intended to be dealt with in any way contrary to the customs laws, he may arrest and detain such Master, and take him before a Resident Magistrate, and if such Master shall fail to satisfy the Resident Magistrate that such goods had not been, were not being, and were not intended to be dealt with contrary to the customs laws, such goods shall be forfeited, and the Master shall incur a penalty of fifty thousand dollars.

14/2004
Sch.

General
regulations
for small
craft.

61. The Minister may from time to time make general regulations in respect of ships not exceeding one hundred tons burden prescribing, with reference to the tonnage, build or general description of such ships the limits within which the same may be used or employed, the mode of navigation, the manner in which such ships shall be so used or employed, the number and description of arms and the quantity of ammunition which such ships may carry, and such other terms, particulars, conditions and restrictions as the Minister may think fit, and also from time to time revoke, alter or vary such regulations.

14/2004
Sch.

Penalty for
infringement
of regula-
tions re small
craft.
12/1985
Sch.

62. Every ship which shall be used or employed contrary to any regulations made under section 61 shall be forfeited unless the same shall have been specially licensed by the Commissioner to be so used or employed, as next hereinafter provided.

Licences for
small craft.

63. The Commissioner may, if he thinks fit, grant licences in respect of any ships not exceeding one hundred tons burden upon such terms and conditions, and subject to such restrictions and stipulations as in such

licences mentioned, notwithstanding any general regulations made as aforesaid, whether the said regulations shall be revoked or not; and if any ship so licensed shall not comply with the conditions imposed by or expressed in any such licence, or if such ship shall be found without having such licence on board, such ship shall be forfeited. The Commissioner may revoke, alter or vary any licence granted as aforesaid.

12/1985
Sch.

64.—(1) The Master of any ship on board of which any officer is stationed—

Accom-
modation of
officer.

(a) for a period exceeding six hours shall provide the officer with proper and sufficient food;

(b) while the ship is proceeding coastwise shall provide the officer with suitable sleeping accommodation.

(2) Any Master of a ship who refuses or fails to provide proper and sufficient food or suitable sleeping accommodation in accordance with the provisions of subsection (1) shall incur a penalty of one hundred thousand dollars.

12/1985
Sch.

14/2004
Sch.

65. The Master of every aircraft or ship, whether laden or in ballast, or his agent, shall (except as otherwise provided in any regulations made under this Act) within twenty-four hours after arrival from any place outside the Island at any port, or at any place specially allowed by the Commissioner, make report of such aircraft or ship, and its stores and cargo, to the Commissioner on the prescribed form in the prescribed manner, and giving the prescribed particulars.

Report.

12/1985
Sch.

Certain goods to be separately reported.

12/1985 Sch.

66. Every report required by section 65 shall show separately any goods which are to be transferred to another aircraft or ship for re-exportation, and shall state whether there be any goods which are to remain on board for exportation in the same aircraft or ship; and such report shall, except in the case of a steamship as defined in section 2 or except where otherwise specially allowed by the Commissioner, give a particular account of all goods remaining on board for exportation, and shall be made before bulk be broken.

Steamship to report certain goods before breaking bulk.
12/1985 Sch.
16/2000 S. 5.

67. The Master of a steamship shall make report of the stores of such ship, and of any containers, packages or parcels for which no bill of lading has been issued, before bulk be broken, unless the Commissioner shall otherwise allow.

Penalty for not making due report.

14/2004 Sch.

68. If the Master of any aircraft or ship, or his agent, shall fail to make due report, or if any of the particulars contained in such report be false, such Master, or his agent, shall incur a penalty of one hundred thousand dollars, and all goods not duly reported shall be forfeited, unless the omission is explained to the satisfaction of the Commissioner.

Penalty for not accounting for package reported.
16/2000 S. 6(a).

69. If any container, package or parcel reported (except as remaining on board as stores for re-exportation or, with the permission of the Commissioner for direct transfer to another aircraft or ship for use as stores or for re-exportation) shall not be duly unloaded, removed and deposited in a Customs area or other place approved by

the Commissioner, and shall not be duly entered and cleared therefrom in accordance with the customs laws; or else shall not be produced to the proper officer for deposit or be deposited in the Queen's warehouse in accordance with the provisions of section 87, the Master or his agent shall pay the duty thereon, and, in addition, a penalty of fifty thousand dollars in respect of each such container, package or parcel, unless he shall explain the failure to unload, remove and deposit or produce such container, package or parcel as aforesaid to the satisfaction of the Commissioner.

12/1985
Sch.

16/2000
S. 6(a)(b).

70. No goods may be imported as aircraft's or ships' stores except such as are required for consumption or use by or for the aircraft or ship, its officers, crew and passengers and any goods not so required (other than the *bona fide* baggage of passengers) shall for all purposes be deemed to be the cargo of such aircraft or ship.

What is
cargo.

71. The Master or agent shall (a) answer immediately all such questions relating to the aircraft or ship, its cargo, stores, baggage, crew, passengers and flight or voyage as shall be put to him by the proper officer; and (b) produce all such books and documents in his custody or control relating to the aircraft or ship, its cargo, stores, baggage, crew, passengers and flight or voyage as the proper officer may require; and (c) before any person (unless permitted by the proper officer) disembarks deliver to the officer who boards such aircraft or ship on arrival at any port or place a list containing the names of each passenger on board such aircraft or ship, and also, if required by such officer, the names of the Master, and of each officer and member of the crew, and if such list be

Master to
answer
questions.

not correct and complete, unless the inaccuracy or omission is explained to the satisfaction of the Commissioner, or if he shall not observe any of the provisions of this section, the Master or his agent shall in respect of every such offence incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Penalty for
wrongly
breaking
bulk.

16/2000
S. 7(a).

72. If after arrival within the Island or the waters thereof bulk shall be broken contrary to section 66 or section 67, or any alteration made in the stowage of the cargo of any aircraft or ship so as to facilitate the unloading of any part of such cargo or any container opened so as to facilitate the unloading of any of the contents thereof before such aircraft or ship shall have arrived at her proper place of unloading, or, not being a steamship, or an aircraft or ship specially allowed so to do, before report of such aircraft or ship shall have been made as hereinbefore provided, or if at any time after arrival as aforesaid any goods be stayed, destroyed or thrown overboard, or any package be opened without the knowledge and consent of the proper officer, in every such case the Master or his agent shall incur a penalty of one hundred thousand dollars, unless cause be shown to the satisfaction of the Commissioner.

16/2000
S. 7(b).

Master to
deliver
previous
clearance.
12/1985
Sch.

73. The Master of every aircraft or ship or his agent shall, if required, deliver to the Commissioner at the time of making report the clearance of such aircraft or ship, if any, from the port or ports from which such aircraft or ship shall have arrived.

74. Any officer may seize any aircraft or ship found abandoned within the Island or the waters thereof, and such aircraft or ship shall be delivered into the custody of the Receiver of Wreck to be dealt with as prescribed by the Wreck and Salvage Law.

Ship abandoned may be seized.

Cap. 419 (1953 Edn. Omitted).

75. Notwithstanding any provisions contained in this Act to the contrary, it shall be lawful, on the arrival from any place outside the Island at any port, or at any place in the Island specially allowed by the Commissioner in the Island of any aircraft or ship having on board cargo intended to be delivered at more than one port or place in the Island, for the Master or his agent to make report at the first mentioned port or place of her whole cargo, reporting separately such portion of the cargo as may be intended for the first mentioned port or place and there to discharge the same; and after the discharge of such cargo, and upon being authorized by the proper officer, the Master may proceed to any other port or ports, or to any place or places in the Island specially allowed by the Commissioner where such portion of the cargo as may be intended for such port or ports or place or places shall be reported by the Master or his agent, in like manner as if such Master had first arrived at such last mentioned port or ports or place or places and the Master or agent so reporting any aircraft or ship, and all persons concerned in discharging the cargo, shall be subject to all the provisions in such respect contained in the customs laws.

Report when discharging at more than one port.

12/1985 Sch.

12 1985 Sch.

Unloading,
entry, re-
moval and
delivery of
goods.
12/1985
Sch.

76. Save in accordance with any regulation made under this Act, or with the written permission of the Commissioner—

- (a) no goods shall be unloaded from any aircraft or ship arriving from any place outside the Island unless authority for unloading the same has been given by the proper officer, nor from any ship (other than a steamship as defined in section 2) unless such goods shall first have been duly entered;
- (b) no goods shall be unloaded or removed from any aircraft or ship arriving from any place outside the Island on Sundays or public holidays at any time whatsoever, or on any other days except between the hours of 8 o'clock in the morning and 4 o'clock in the afternoon, or shall be transferred from any such aircraft or ship into any vessel at such time as will cause such goods to be afloat in such vessel on the said days, or on other days except between the said hours;
- (c) no goods after having been unloaded from any aircraft or ship arriving from any place outside the Island into any vessel to be landed shall be transhipped or removed into any other vessel previously to their being landed; and the vessel into which any goods after being unloaded from a ship shall be put, shall, if so required by the Commissioner, be a ship licensed under section 174; and any goods which have been unloaded from any aircraft or ship and put into any vessel to be landed shall be taken directly and without delay to an

12/1985
Sch.

approved place of unloading or sufferance wharf approved for the purpose within the same port, there- to be landed forthwith;

- (d) no goods (except goods unloaded into a vessel to be landed in accordance with paragraph (c) shall be unloaded from any aircraft or ship arriving from any place outside the Island, except at an approved place of unloading or sufferance wharf approved for the purpose, and all goods when so unloaded, and all goods which shall have been put into a vessel to be landed in accordance with paragraph (c) shall immediately upon being unloaded or landed be conveyed in the care of the proper officer into the Customs area, or to a Queen's warehouse if the Commissioner shall so require;

12/1985
Sch.

- (e) no goods shall be removed from any part of the Customs area or from the Queen's warehouse into which the same shall have been conveyed unless such goods shall first have been duly reported and entered, and authority for the removal or delivery of the same has been given by the proper officer;

- (f) goods entered to be warehoused shall be removed by the importer by such ways, in such manner and within such time as the proper officer shall direct to the warehouse for which the same are entered, and delivered into the care of the officer in charge of the warehouse; provided that, if the Commissioner shall so require, the importer shall first enter into a bond for the due warehousing of such goods.

12/1985
Sch.

77. The provision of section 76 shall apply to the cargo of the aircraft or ship only. No goods whatsoever other than cargo, duly reported as such, shall be taken out of any aircraft or ship arriving from any place outside the Island or delivered to any person aboard such aircraft or ship other than for the consumption or use of the crew or passengers thereof except under such conditions (which conditions may vary the procedure

As to goods
other than
cargo.

as to reporting the aircraft or ship as required by this Act) as may be prescribed in any regulations made under this Act or directed by the Commissioner in any particular case. The term "goods" in the expression "no goods whatsoever" shall include passengers' baggage, stores, and any goods which may be taken on board any aircraft or ship arriving from any place outside the Island while such aircraft or ship is within the Island or the waters thereof.

12/1985
Sch.

Forfeiture.

78. If any goods shall be unloaded, removed or dealt with contrary to the provisions of section 76 or section 77 or to the terms and conditions contained in any written permission given by the Commissioner they shall be forfeited.

12/1985
Sch.

Delivery of
bullion and
coin.

79. Notwithstanding anything hereinbefore contained it shall be lawful for the Commissioner to permit the delivery to the importer of any bullion or coin under the authority of the proper officer without entry thereof, but if such importer shall not within forty-eight hours after the same shall have been removed from the importing aircraft or ship deliver to the proper officer a full and true account thereof, including its weight and value, he shall incur a penalty of one hundred thousand dollars.

12/1985
Sch.

Declara-
tion in
absence of
documents.
3/2001
S. 5.

80.—(1) If the importer or any goods is unable to furnish full particulars of the goods for want of any document or information concerning them he shall make and subscribe a declaration in the prescribed form to that effect before the Commissioner who shall act in accordance with subsection (2).

(2) The Commissioner—

- (a) shall permit the importer to examine and enter the goods; and
- (b) may allow delivery of the goods if he is satisfied that—
 - (i) the description of the goods for tariff and statistical purposes is correct;
 - (ii) in the case of goods liable to duty *ad valorem*, the value declared on the entry is acceptable; and

- (iii) in the case of goods liable to duty according to the weight or measurement thereof, the weight or measurement declared on the entry is correct.

Entry of goods where Commissioner is to assess value. 3/2001 S. 5.

81.—(1) Where goods examined under section 80 (1) are liable to duty *ad valorem* and the Commissioner considers that he is unable to make a proper assessment of the value thereof, he may direct that—

- (a) the goods be further examined and, on that basis, a provisional assessment be made of the duty payable on the goods;
- (b) the goods be entered provisionally based on the payment by the importer of the amount of duty calculated by him; and
- (c) such amount be brought to account as revenue.

(2) Pending entry of the goods, an importer shall, in addition to the amount referred to in subsection (1) (b), deposit with the Commissioner, an amount equal to the difference between the duty assessed provisionally by the Commissioner under subsection (1) (a) and the duty calculated by the importer under subsection (1) (b).

(3) The importer may, with the approval of the Commissioner, give security in the form of a bond for the amount payable under subsection (2).

(4) Where goods are entered provisionally pursuant to this section, the Commissioner shall, in writing, require the importer of such goods to produce, within three months of the provisional entry, such document or information relating to the value of the goods as the Commissioner may specify.

(5) Where—

- (a) the documents or information required under subsection (4) have not been produced within the time specified in that subsection; or

- (b) the importer informs the Commissioner in writing before the expiration of the time specified in subsection (4) that he is unable to produce any further documents or information,

the amount of duty which was assessed provisionally under subsection (1) shall be treated as the final assessment.

(6) Unless the importer commences proceedings under section 18 within four months of the date of the final assessment under subsection (5), the deposit paid shall be brought to account as revenue.

(7) Where an importer fails to produce the required documents or information pursuant to subsection (4)—

- (a) the Commissioner shall notify the importer in writing of the final assessment within two weeks of the date of such assessment;
- (b) no dispute shall be considered to have arisen until such time as the final assessment is made under subsection (6).

(8) Where—

- (a) the additional documents or information required under subsection (4) have been provided to the satisfaction of the Commissioner; and
- (b) the amount of duty as assessed by the Commissioner is greater or less than the amount of the provisional assessment made under subsection (1),

the amount representing the difference shall either be refunded to or paid by the importer, as the case may be.

82.—(1) Where—

- (a) pursuant to section 81 (4), an importer submits documents or information to the Commissioner relating to the value of goods imported by him; and
- (b) the Commissioner knows or has reasonable grounds for believing that such documents or information are false in any material particular in relation to the value of the goods,

the Commissioner shall act in accordance with subsection (2).

Entry where
importer
provides false
documents.
3/2001
S. 5.

(2) The Commissioner—

- (a) shall inform the importer in writing that he is not satisfied with the documents or information; and
- (b) may, in writing, request the importer to submit such further documents or information within such period, as the Commissioner may specify.

(3) Where the imported goods required to be entered are not prohibited or restricted, the Commissioner may allow provisional entry of such goods on the payment of a deposit equal to the amount of the duty assessed by the Commissioner together with an additional amount, not being more than one-half of the amount assessed.

(4) The amount of duty based on the calculation by the importer shall be accepted by the Commissioner unless the Commissioner commences proceedings in court within four months of the date of provisional entry of the goods.

(5) The deposit, together with the additional amount paid pursuant to subsection (3), shall, in addition to any penalty which the court may impose, be forfeited where the court finds that the importer has committed an offence.

(6) Where the Commissioner has commenced proceedings in court, no dispute shall be considered to have arisen for the purposes of section 17 until the court proceedings have been concluded.

(7) Where he considers it necessary, the Commissioner may cause goods which are entered provisionally to be photographed before delivery in such manner as to show—

- (a) the method of packaging;
- (b) a sample of the goods; or
- (c) any identifying marks that indicate the nature and type of the goods.

83. The Commissioner may retain such samples of the goods entered under section 80 for such period up to the final entry of such goods as he shall require, and the proper officer shall make an inventory of such goods and shall cause a certified copy of the inventory to be forwarded to the importer.

Samples to be retained.

3/2001
S.6.

Goods not
entered after
declaration.
12/1985
Sch.

84. If the importer, having made a declaration in accordance with section 80, shall not make entry as therein provided, or if the Commissioner is not satisfied as aforesaid (in which case any entry which shall have been made shall be *ipso facto* void), the Commissioner shall cause the goods referred to in such declaration to be deposited in a Queen's warehouse and dealt with as provided in section 88.

Power to
waive pro-
duction of
documents.

85. Notwithstanding anything hereinbefore contained, if the Commissioner is satisfied, whether before or after the warehousing under section 84 of any goods liable to duty *ad valorem*, that it is impossible for the importer to obtain satisfactory documentary evidence of the value of such goods, or if in any case the documentary evidence relating to such goods, though not complete, is in the opinion of the Commissioner sufficient to enable a reliable estimate of the value to be made, it shall be lawful for the Commissioner to permit such goods to be entered according to the estimated value.

12/1985
Sch.
3/2001
S. 8.

Deposit in
Certain cases.

86. Where the Commissioner permits any goods to be entered in the absence of any document under the provisions of section 85, it shall be lawful for him to require the person entering the goods to deposit with him such additional sum as he shall require, not exceeding one-half of the duty paid upon such goods. Any sum so deposited shall be forfeited unless the person entering the goods shall produce the required document within three months of the date of entry or unless he shall explain his failure to the satisfaction of the Commissioner.

12/1985
Sch.

Goods not
entered or
delivered.

87. If any goods imported in any aircraft or ship shall remain on board such aircraft or ship, or having been unloaded, shall not be entered and also produced for

examination and customs clearance within fourteen days from the time when such goods were unloaded, or such further period as the Commissioner may in any special circumstances allow, then such goods shall be deposited in such Queen's warehouse as the Commissioner shall direct by the agent of such aircraft or ship, or by the Commissioner, if there be no agent, or if the agent shall not act forthwith as herein required. Such goods shall be subject to rent and other charges as if they were goods warehoused in a Queen's warehouse.

30/1954
S. 2.
12/1985
Sch.

88.—(1) Where under the provisions of this Act any goods are required to be deposited in a Queen's warehouse and such goods are of a perishable nature, then it shall be lawful for the Commissioner, notwithstanding such provisions, to sell the same forthwith by public auction; and if such goods, though not perishable, are of a kind not permitted by any other provision of law to be deposited in a Queen's Warehouse, it shall be lawful for the Commissioner, notwithstanding such provisions to sell the same by public auction after fourteen days' notice by publication in the *Gazette*.

Goods ware-
housed may
be sold.
12/1985
Sch.

(2) Where any goods are deposited in a Queen's warehouse under the provisions of this Act and the same are not entered for warehousing or delivery from such Queen's warehouse within three months after such deposit, or within such further period as the Commissioner may direct, and all charges for removal, freight and rent and all other expenses incurred in respect thereof duly paid, such goods may be sold by public auction after one month's notice being given by publication in the *Gazette*.

12/1985
Sch.

(3) In all cases where goods are sold under the provisions of this section, the proceeds shall be applied first in discharge of duties (if any), of the expenses of removal and sale, and of rent and charges due to the Government, and then of freight and other charges; and the balance, if any,

shall be paid to the owner of the goods on his application for the same, if such application be made within two years from the time of the sale of such goods, but otherwise shall be paid into the Consolidated Fund.

Goods not
sold on
being offered
for sale.

89. If any goods on being offered for sale as aforesaid cannot be sold for a sum to pay all duties, expenses, rent and charges, the same may be destroyed, or otherwise disposed of as the Minister may direct.

Goods ware-
housed may
be examined.
12/1985
Sch.

90. It shall be lawful for the Commissioner to cause any goods required to be removed under this Act to a Queen's warehouse to be opened for examination by any officer, as often as may be required, at the expense of the owner of such goods.

Goods may
be entered
by ship-
owner, &c.

91. Where the owner of any goods imported in any ship (not being a steamship as defined in section 2) into the Island fails to make entry thereof, or having made entry, fails to land the same or to take delivery thereof by the times severally hereinafter mentioned, the shipowner or Master or the agent of either, may make entry of the said goods at the times, in the manner, and subject to the conditions following, that is to say—

- (a) if a time for the delivery of the goods is expressed in the charter party, bill of lading or agreement, then at any time after the time so expressed; and
- (b) if no time for delivery of the goods is expressed in the charter party, bill of lading or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or public holiday, after the report of the ship:

Provided that if at any time before the goods are landed or unshipped, the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed to do

so, and his entry shall, in such case, be preferred to any entry which may have been made by the shipowner or Master, or the agent or either.

92. The periods of time mentioned in section 91 shall be computed from the time at which the aircraft or ship shall have been released from any quarantine to which they may have been subjected.

Computation of time.

93. Whenever any goods shall remain on board any importing aircraft or ship beyond the period of ten days after the arrival of such aircraft or ship, or beyond such further period as the Commissioner may allow, such aircraft or ship shall be detained by the proper officer until all expenses of watching or guarding such goods beyond such ten days, or such further time, if any, allowed as aforesaid, not exceeding fifty dollars *per diem*, and of removing the goods or any of them to the Queen's warehouse, in case the officers shall so remove them, be paid; and the like charge *per diem* shall be made in respect of any derelict or other aircraft or ship coming, driven, or brought into the Island under legal process, by stress of weather, or for safety, when it is necessary to station any officer in charge, either on board thereof or otherwise, for the protection of the revenue, so long as the officer shall so remain.

Aircraft or ship may be detained till goods landed.

12/1985 Sch.

94.—(1) No person, whether a passenger or not, shall disembark or go ashore from, or go on board any aircraft or ship that shall have arrived within the Island or the waters thereof save at such times, by such means and by such ways as may be prescribed in any regulations made under this Act, or otherwise as the Commissioner may allow.

Restrictions as to passengers and other persons.

12/1985 Sch.

(2) The Master of any aircraft or ship who shall permit, allow or suffer any person to leave such aircraft or ship after arrival in the Island or the waters thereof save

14/2004
Sch.

as permitted under this Act shall be guilty of an offence and the Master or his agent shall incur a penalty of one hundred thousand dollars.

PART IV. *Warehoused Goods and Goods Deposited in a Customs Area*

Ware-
housing.

95. It shall be lawful for the Minister from time to time by notice in the *Gazette* to declare what kind of goods shall or may be warehoused upon first importation without payment of duty thereon; and any such goods, while in any warehouse, and all goods whatsoever while in any Customs area, shall be subject to such regulations as may be made under this Act, and in the case of goods deposited in a Queen's warehouse or Customs area in the occupation or use of the Government, to the payment by the owner of such goods, at the prescribed times, of such rent and other charges as the Minister shall from time to time direct by notice in the *Gazette*; and if at any time any such rent or other charges shall not be paid to the Commissioner when due and payable on any goods in any such Queen's warehouse or Customs area, such goods may, without prejudice to any other lawful method of recovery, be sold, or otherwise dealt with, and any proceeds applied, as if they were goods which might be sold, or otherwise dealt with, under the provisions of sections 121 and 122.

12/1985
Sch.

Compensa-
tion for
damage to
goods
deposited in
Queen's
warehouse.

96. No compensation shall be payable by Government to any importer, owner or consignee of any goods deposited in a Queen's warehouse or in a Customs area in the occupation or use of Government, save when loss or damage occurs as the direct result of the wilful act or negligence of Government or of an officer.

Goods
deemed to
be in
Queen's
warehouse.

97. Where under the customs laws any goods are or may be required to be deposited in a Queen's warehouse, and for any reason the Commissioner may in his discretion

decide that it is undesirable or inconvenient to deposit such goods in a Queen's warehouse, such goods shall for all purposes be deemed to be deposited in a Queen's warehouse as from the time that the same are required to be deposited in a Queen's warehouse, and shall also be chargeable with such expenses for securing, watching and guarding, and of removing the same from the original to some other place of deposit (if the Commissioner shall so require) as the Commissioner shall deem reasonable, and neither the Commissioner nor any officer shall be liable to make good any damage which such goods may sustain by reason of or during the time of their being so deposited and dealt with as aforesaid.

12/1985
Sch.

98.—(1) No building or place may be used as a private warehouse, or, save with the written permission of the Commissioner, as a Customs area, until a bond, in such sum as may from time to time in each case be required by the Commissioner, is given by the warehouse-keeper, or by the owner or occupier of the Customs area, as the case may be, with one or more sufficient sureties, conditioned on due payment of all duties and the due observation of the provisions of the customs laws.

Private
ware-
houses and
Customs
areas.

12/1985
Sch.

(2) The Commissioner may require a written explanation of any warehouse-keeper or his servant employed in a private warehouse in order to enquire into any matter affecting the administration and control of such private warehouse.

12/1985
Sch.

(3) In any case where the Commissioner is not satisfied with a written explanation given under subsection (2), or where no such explanation has been given, such person or persons as the Minister shall appoint may institute any enquiry into the matter, and may require the attendance of any person, at the place of enquiry, to give evidence in regard to the matters under enquiry and any matters relating

12/1985
Sch.

thereto. Every person so summoned who shall neglect so to attend, or who shall refuse to answer any question put to him according to the best of his knowledge and belief, shall for every such default or offence forfeit a sum not exceeding one hundred thousand dollars.

14/2004
Sch.

Officers not
liable for
wrong
delivery.

99. No action shall be brought against the Government or any of its officers for loss or damage sustained by goods while in any private warehouse or private Customs area or for any wrong or improper delivery of goods therefrom.

Warehouse-
keeper, &c.,
not to enter
warehouse
without
permission.

100. The owner or occupier of any Customs area or a warehouse-keeper shall not by himself or by any person in his employ open or gain access to any building in a Customs area or special store or private warehouse except in the presence or with the knowledge and consent of an officer acting in the execution of his duty.

Warehouse-
keeper, etc.,
to provide
facilities

12/1985
Sch.

101. The owner or occupier of any private warehouse or Customs area shall provide such office and other accommodation and weights and scales for examining and taking an account of goods as the Commissioner may require and shall secure such goods to the satisfaction of the Commissioner.

Revocation
of order
approving
warehouse.

12/1985
Sch.

102. On the revocation of the appointment of any private warehouse the duties on all goods warehoused therein shall be paid, or the goods shall be exported or removed to another warehouse, within such time, not less than three months, as the Commissioner may direct. Notice in writing of such revocation addressed to the warehouse-keeper of the private warehouse and left thereat, shall be deemed to be notice to all persons interested in the goods.

Disposal of
goods on
revocation.

103. If any goods shall not be duly exported or removed in conformity with section 102 such goods shall be taken to a Queen's warehouse by an officer, and may be sold, or other-

wise dealt with, and any proceeds applied as if they were goods which might be sold or otherwise dealt with under the provisions of section 88.

104. Upon the delivery of any goods entered to be warehoused into the care of the officer in charge of any warehouse, such officer shall, subject to any other direction of the Commissioner, whether account has been taken of such goods on the quay or elsewhere, or not, take a particular account of such goods and shall enter in a book prepared for that purpose the name of the importing aircraft or ship, and of the person in whose name such goods are entered, the number of packages, the mark and number of each package, and the description of the goods; and when the same shall have been deposited in the warehouse, with the authority of such officer, he shall certify at the foot of the account that the entry and warehousing of the goods is complete, and such goods shall from that time be considered goods duly warehoused.

Procedure
as to ware-
housing.

12/1985
Sch.

105. All goods warehoused shall be deposited in the packages in which they are imported, except such goods are permitted to be skipped on the quay, or bulked, sorted, lotted, packed or repacked in the warehouse, in which case they shall be deposited in the packages in which they are contained when the account thereof is taken by the proper officer on the completion of such operation.

Goods to be
warehoused
in packages
in which
imported.

106. If in the case of goods warehoused in a private warehouse any alteration shall afterwards be made in the goods or packages so deposited, or in the packing thereof in the warehouse or in the marks or numbers of such packages without the presence and sanction of the proper officer or if the same shall be removed from the part of the warehouse in which they were deposited without the knowledge of the

Penalty for
interfering
with storage
of goods in
a private
warehouse.

proper officer, except for delivery after they have been duly entered, and under the authority of the proper officer, such goods shall be forfeited and the occupier shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Commissioner may
direct stow-
ing of goods.
12/1985
Sch.

107. The Commissioner may direct in what different parts or divisions of any warehouse or Customs area, and in what manner, any goods shall be deposited therein, and that reasonable access may be had to goods so deposited.

Failure to
comply with
directions.
12/1985
Sch.

108. Where any goods are deposited contrary to any directions of the Commissioner under section 107, the Commissioner shall send to the occupier of the warehouse a written notice requiring him within a period of seven days (Sundays and Public Holidays excluded) to comply with such directions, and if the occupier fails to so comply within such period he shall incur in respect of every package so deposited a penalty of twenty-five thousand dollars, together with a further penalty of one thousand dollars for each day during which any such package shall remain so deposited.

14/2004
Sch.

Warehoused
goods to be
produced to
officer.

12/1985
Sch.

109.—(1) If the occupier of any warehouse or Customs area or any part thereof shall not produce to any officer on his request any goods deposited in such warehouse or Customs area, or any part thereof, which shall not have been duly entered or delivered therefrom, the Commissioner shall send to the occupier a written notice requiring him within a period of seven days (Sundays and Public Holidays excluded) to produce to the officer, or to account to the satisfaction of the officer for, the goods.

(2) Where the occupier fails within such period to produce the goods to the officer, or to account for them to his satisfaction, the occupier shall for every such failure incur a penalty of one hundred thousand dollars in respect of every package or parcel not so produced or accounted for.

14/2004
Sch.

(3) Notwithstanding anything in this section contained the occupier shall, in every case, pay the duties (in addition to any penalty) due upon every package or parcel not produced.

110. If any goods entered to be warehoused shall not be duly warehoused by the importer in pursuance of such entry, or if any goods whatsoever, being duly warehoused or deposited in a Customs area, shall be in any way concealed in or removed from the warehouse or Customs area, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal mixing, removal, or concealment, they shall be forfeited and the importer shall incur a penalty of two hundred thousand dollars.

Penalty for not warehousing, &c.

14/2004 Sch.

111. If any person shall clandestinely open any warehouse or special store or except in the presence of the proper officer acting in the execution of his duty, gain access to the goods therein, he shall, for every such offence, incur a penalty of two hundred thousand dollars; and if any person not authorized by the warehouse-keeper shall enter any warehouse or any part of a Customs area when forbidden by such officer, or refuse to leave any warehouse or any part of a Customs area when requested to do so by such officer, he shall incur a penalty of one hundred thousand dollars.

Penalty for illegally opening warehouse or Customs area.
14/2004 Sch.

14/2004 Sch.

112.—(1) Where any goods required to be previously entered are, except as permitted by the customs laws, taken out of any warehouse or Customs area, the warehouse-keeper or the occupier of the Customs area shall forthwith pay the duties upon such goods.

Penalty for unlawful removal or embezzling of warehoused goods.
35/1997 S. 2.

(2) Any person who—

(a) unlawfully takes out any goods from any warehouse or Customs area or aids or assists or is concerned therein; or

- (b) steals, embezzles or in any way unlawfully misappropriates or converts any goods duly warehoused or deposited in a Customs area, or unlawfully destroys any such goods,

shall be guilty of an offence and shall be liable, on summary conviction before a Resident Magistrate, to imprisonment for a term not exceeding five years.

(3) Where any person referred to in subsection (2) is an officer and has been prosecuted to conviction no duty shall be payable for or in respect of such goods, and any damage sustained by reason of such theft, embezzlement, misappropriation, conversion or destruction shall, with the consent of the Minister, be made good to the importer, consignee or owner by the Accountant-General.

Commissioner may do reasonable acts to warehoused goods.
12/1985
Sch.

113. The Commissioner shall have power at the expense of the owner of goods warehoused in a Queen's warehouse, or deposited in a Customs area in the occupation or use of the Government, to do all such reasonable acts as may by him respectively be deemed necessary for the proper custody and preservation of such goods, and shall have a lien on the said goods for expenses so incurred; but no such acts shall be done until the expiration of twenty-four hours after the owner of such goods has been notified that such acts are required, unless the Commissioner shall in his discretion decide that immediate action is necessary for the proper custody or preservation of the goods as aforesaid.

Owner to pay cost of action under section 113.
12/1985
Sch.

114. The importer or owner of any such goods shall pay any expenses incurred in respect thereof under section 113 at such times and in such manner as the Commissioner shall either generally or in any particular case direct, and if any such expenses be not paid in accordance herewith, such goods may be sold or otherwise dealt with, and any proceeds applied as if they were goods which might be sold or otherwise dealt with under the provisions of section 122.

115. The removal of warehoused goods from a warehouse to any other warehouse shall be subject to any regulations made under this Act and to such other conditions as the Commissioner may direct.

Removal of warehoused goods to another warehouse.
12 1985 Sch.

116. On the delivery of any goods for removal as aforesaid, an account containing the particulars thereof shall be transmitted by the proper officer of the port or place of removal to the proper officer of the port or place of destination, and the person requiring the removal thereof shall enter into a bond, with such security or securities as the Commissioner shall require, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port or place of destination within such time as the proper officer may direct; and such bond shall not be discharged unless such goods shall have been produced to the proper officer and duly re-warehoused at the port or place of destination within the time directed by the proper officer as aforesaid, or unless the full duties of customs shall have been paid thereon as provided in section 118, or unless such goods shall have been otherwise accounted for to the satisfaction of the Commissioner, nor until the full duties due upon any deficiency of such goods not so accounted for shall have been paid.

Procedure on delivery.

12/1985 Sch.

12/1985 Sch.

117. Upon the arrival of such goods at the port or place of destination, they shall be entered and warehoused as nearly as may be subject to the laws, rules and regulations, which apply to the entry and warehousing of goods on first importation.

Goods removed subject to warehouse regulations.

118. If, upon the arrival of goods so removed as aforesaid at the port or place of destination, the parties shall be desirous forthwith to export

May be entered for use in the Island of exportation.

the same, or to pay duty thereon for use within the Island, without actually lodging the same in the warehouse for which they have been entered and examined to be re-warehoused, the officer at such port or place may permit the same to be entered and delivered for home use, or, after all the formalities of entering and examining such goods for re-warehousing have been duly performed, to be entered and loaded for exportation, as if such goods had been actually lodged in such warehouse.

Removal, &c.,
to be subject
to certain
conditions.

119. If any goods taken from a warehouse for removal or for exportation or use as aircraft's or ships' stores shall be removed or put on board an aircraft or ship, except with the authority or under the care of the proper officer, and in accordance with any regulations made under this Act and in such manner, by such persons and within such time, and by such roads or ways, as such officer shall permit or direct, such goods shall be forfeited; and if any such goods shall be illegally removed or carried away prior to being put on board the exporting or removing aircraft, ship or carriage, or from any exporting or removing aircraft, ship or carriage, in or on which the same shall have been put, the bond given in respect thereof shall be forfeited, and may forthwith be put in suit for the penalty thereof, although the time prescribed in such bond for putting the goods on board the exporting aircraft or ship, or re-warehousing such goods at the place of destination, shall not have expired; and all such goods shall be forfeited.

Commis-
sioner may
remove goods
warehoused
in a Queen's
warehouse
to another.
12/1985
Sch.

120. Notwithstanding anything hereinbefore contained, the Commissioner may, if in his discretion he shall decide that such action is advisable, remove goods at the cost of Government from one Queen's warehouse to another in any manner he may deem reasonable.

121. All warehoused goods shall be entered and delivered either for use within the Island, or as aircraft's or ships' stores, or for exportation not later than one year after the day on which the same were warehoused, or within such further period and in such cases as the Commissioner shall direct, unless the owner of such goods shall be desirous of re-warehousing the same, in which case the same shall be examined by the proper officer, and the duties due upon any deficiency or difference between the quantity ascertained on importation and the quantity found to exist on such examination, together with the necessary expenses attendant thereon, and any charges incurred in respect of the said goods, shall, subject to such allowances as are by law permitted in respect thereof, be paid to the Commissioner and the quantity so found shall be re-warehoused in the name of the then owner thereof in the same manner as on first importation:

Re-warehousing.
16/2000
S. 8.

12/1985
Sch.

12/1985
Sch.

Provided that if the owner shall, with the concurrence of the warehouse-keeper, desire to re-warehouse the same according to the account taken at the importation thereof, without re-examination, such re-examination may be dispensed with, the officer being satisfied that the same are still in the warehouse, and that there is no reason to suspect that there is any undue deficiency; but the warehouse-keeper shall be liable to make good the duty on any deficiency not allowed by law which may be discovered in the goods at the time of delivery thereof, or any earlier time:

Provided further that no goods shall be re-warehoused under this section unless the proper officer certifies that the goods are in proper condition to be re-warehoused.

122. If any warehoused goods shall not be duly entered for used within the Island, or as aircraft's or ships' stores, or exported or re-warehoused, and the duties ascertained to be due on the deficiencies as aforesaid and any charges and expenses shall not be paid

Disposal of goods not re-warehoused.

16/2000
S. 9.

at the expiration of one year from the previous entry and warehousing thereof, or within such further period as shall be directed as aforesaid, the same shall, after one month's notice by advertisement in the *Gazette* and a daily newspaper, if any, published in Kingston, with all convenient speed be sold by public auction, and the proceeds thereof shall be applied to payment of the duties, expenses of the sale, and of any rent and charges due to the Government, then in discharge of any lien for freight and other charges, and the surplus, if any, shall be paid to the owner of such goods on his application for the same within two years from the time of sale, but otherwise shall be paid into the Consolidated Fund; and if such goods, on being so offered for sale, cannot be sold for a sum to pay all duties, expenses, rent and charges due to the Government, then the same may be destroyed or otherwise disposed of as the Minister may direct; and the duties due upon any deficiency in any warehoused goods not allowed by law shall be forthwith paid by the warehouse-keeper.

Freight
on goods
warehoused.

123. Any officer having the custody of any goods which shall have come into his hands under this Act shall refuse delivery thereof from a Queen's warehouse or other place of deposit until proof be given to his satisfaction that the freight, landing and storage charges due on such goods have been paid; provided that this section shall not apply to goods which shall have been warehoused in pursuance of an entry for warehousing.

Warehoused
goods entered
or sold must
be removed
within 14
days.

124. If any goods shall remain in any warehouse for a period of fourteen days after being entered for use within the Island, or after being sold by public auction under the customs laws, they shall be forfeited and disposed of in such manner as the Minister may direct, unless the failure to remove the same shall be explained to the satisfaction of the Commissioner.

12//1985.
Sch.
Delivery in
special
circum-
stances.

125. The Commissioner may permit any goods to be taken out of any warehouse or Customs area without payment of duty for such purpose and for such period as to him

may appear expedient, and in such quantities, and under such regulations and restrictions, and with such security by bond for the due return thereof, or the payment of the duties due thereon, as he may direct or require; and if any such goods shall be dealt with in any way contrary to the terms of such permission or to such regulations or restrictions, the same shall be forfeited.

126. The Commissioner may permit warehoused goods to be delivered as stores for a ship of not less than thirty tons burden, or an aircraft, in accordance with section 157; and if any goods taken from a warehouse for use as stores shall not be duly put on board the aircraft or ship for which the same are entered, or otherwise accounted for to the satisfaction of the Commissioner, or shall be dealt with in any way contrary to the customs laws, such goods shall be forfeited.

Stores.

12/1985
Sch.

127. The duties to be paid when warehoused goods are entered for use within the Island shall not be less in amount than would have been payable according to the value or quantity thereof at the time of importation, except as to the following goods, namely, tobacco in leaf, oil in casks, wine in casks, malt liquor in casks, and spirits in casks, the duties whereon, when cleared from the warehouse for use within the Island, shall be chargeable upon the quantity of such goods ascertained by weight, measure, or strength at the time of actual delivery thereof, unless there is reasonable ground to suppose that any portion of any deficiency has been caused by illegal abstraction.

Duty to
be paid
according to
original
account.

128. Subject to the observance by the exporter of all the provisions of the customs laws and of the conditions of any bond, no import duty shall be charged in respect of any goods entered under bond for the due exportation and landing thereof in a place outside the Island, or for use as air-

Goods
entered for
exportation
exempt
from import
duty.

12/1985
Sch.

craft's or ships' stores in accordance with section 157, and delivered from any warehouse or Customs area, unless the Commissioner has reasonable grounds to suppose that any deficiency in any such goods, or any part thereof, has arisen from illegal abstraction, in which case duty shall be paid on such deficiency by the owner of such goods.

Power of
Commissioner
to permit
processing and
manufacture
in warehouse
subject to
conditions.
44/1954
S. 2.
12/1985
Sch.

129. Notwithstanding anything to the contrary in this Act and subject to the provisions of the Excise Duty Act, it shall be lawful for the Commissioner, under such conditions as he may generally or in any particular case impose, to permit goods to be warehoused for the purpose of being processed or used in the manufacture of other goods in the warehouse in which such goods have been deposited, and for this purpose he may permit goods not liable to import duty, or to excise duty, or goods on which import duty is payable or has been paid, or goods on which excise duty is payable or has been paid, to be taken into such warehouse in such quantities or under such conditions as he may approve.

Provisions as
to import duty
on materials
used in the
processing or
manufacture
of goods under
section 129.
44/1954
S. 2.

130.—(1) The following provisions shall have effect with respect to import duty on materials used in the processing or manufacture of goods under section 129—

- (a) subject to paragraphs (b), (c) and (d), on the delivery for consumption in the Island of any such goods, import duty shall be payable on such imported materials as have been warehoused and used in the processing or manufacture of such goods in such quantities as the Commissioner shall determine, and at such rate, if any, as may be due and payable on the like kind of materials if entered for consumption in the Island;
- (b) where any such goods would, irrespective of their country of origin, be free of duty if imported, import duty shall not be levied on materials used in their processing or manufacture;

12/1985
Sch.

(c) where any such goods would, if imported, and being of Common Market origin within the meaning of the Revised Treaty, be free of duty, import duty shall not be levied on the materials used in their processing or manufacture if such materials are of like origin, but if such materials are not of Common Market origin, import duty shall be levied on such materials either at the rate of duty prescribed in relation to such materials in the tariff or at the rate of duty generally applicable to processed or manufactured goods of the same class or description and not of Common Market origin, whichever is the lesser;

45/1975
S. 5(a).

(d) where any such goods would, if imported from any source whatsoever, be liable to duty, import duty shall be levied on the materials used in their processing or manufacture, either at the rate of import duty applicable in relation to such materials or at the rate of import duty applicable to processed or manufactured goods of the same class or description if imported from a like source as such materials, whichever is the lesser.

45/1975
S. 5(b).

(2) In this section Revised Treaty means the “Revised Treaty of Chaguaramas establishing the Caribbean Community signed in Bahamas on July 5, 2001, as is in force in relation to Jamaica.

131. Subject to the provisions of sections 129 and 130, goods processed or manufactured under the provisions of section 129 shall be subject to all the provisions of the customs laws relating to warehoused goods in so far as such provisions are or may be applicable.

Goods processed or manufactured under section 129 otherwise subject to provisions of customs laws.
44/1954
S. 2.

132.—(1) The Commissioner may by instrument in writing, subject to such conditions as he thinks fit, from time to time—

In-bond concessions.
49/1960
S. 2.
12/1985
Sch.

- (a) grant an in-bond concession, to any warehouse-keeper;
- (b) approve the operation of an in-bond concession by any warehouse-keeper or his approved agent, or both.

12/1985
Sch.

(2) The Commissioner may by instrument in writing, at any time and in his discretion, withdraw any in-bond concession granted by him under this section; and he may likewise vary or rescind any of the conditions subject to which the grant of any such concession was made or the operation thereof approved.

12/1985
Sch.

(3) Where an in-bond concession is in operation the Commissioner may direct the conditions under which goods or samples thereof to which the concession applies may be displayed by the concessionaire or his approved agent and, without prejudice to the generality of the foregoing, may require all such goods or samples to be—

- (a) clearly marked or otherwise distinguished from other goods on display;
- (b) kept in such part or parts of any premises wherein the concessionaire or his approved agent displays goods as the Commissioner may approve.

12/1985
Sch.

(4) It shall be a condition as respects the operation of every in-bond concession that any advertisement displayed by an approved agent in relation to an in-bond concession shall clearly indicate that he is an agent for a concessionaire named in the advertisement.

19/1967
S. 6(1).

(5) The Commissioner may require—

- (a) any applicant for an in-bond concession as a condition precedent to the grant of such concession; or
- (b) any concessionaire,

12/1985
Sch.

to give security within such time and of such amount not exceeding two thousand dollars as the Commissioner may specify for the payment by such applicant or concessionaire, as the case may be, of any amount which may at any time be

claimed from him by a visitor to the Island in respect of goods sold to such visitor and admitted by him or adjudged by a court of competent jurisdiction to be payable by him.

(6) The Commissioner may, in relation to securities under subsection (5), specify different amounts in respect of different applicants or concessionaires and any such security shall be given either by deposit with the Commissioner of the amount of the security or partly by bond with sureties approved by the Commissioner and partly by deposit with the Commissioner of such sum of money as the Commissioner may specify.

19/1967
S. 6(1).
12/1985
Sch.

(7) Payment shall not be made out of any deposit under this section except with the consent of the person by whom such deposit was made or by order of a Court.

(8) Where payment is made out of any deposit as aforesaid, the Commissioner—

12/1985
Sch.

- (a) shall, by notice in writing, require the concessionaire by whom such deposit was made to make a further deposit equivalent to the amount so paid out; and
- (b) may, if the concessionaire does not comply with such notice within ten days of the receipt thereof, withdraw the in-bond concession granted to him.

(9) If any person—

- (a) being a concessionaire or an approved agent, without reasonable excuse—
 - (i) infringes any condition which is still in force and subject to which the operation of the in-bond concession was approved; or
 - (ii) fails to carry out any direction of the Commissioner under this section; or
- (b) not being a concessionaire or an approved agent, with intent to deceive, displays any advertisement

12/1985
Sch.

indicating in any manner that he is a concessionaire or an approved agent, or that any premises owned or occupied by him are used for the operation of an in-bond concession or that goods may be obtained from or through him free of customs duty,

any such person shall be guilty of an offence against this Act and shall incur a penalty of two hundred and fifty thousand dollars in the case of an offence under paragraph (a), and five hundred thousand dollars in the case of an offence under paragraph (b).

14/2004
Sch.

14/2004
Sch.

(10) In this section—

“advertisement” shall have the meaning assigned to it in section 2 of the Advertisements Regulation Act;

12/1985
Sch.

“approved agent” means an agent of a concessionaire who is authorized in writing by the Commissioner to exhibit goods or samples thereof in connection with an in-bond concession;

“concessionaire” means a warehouse-keeper in relation to whom an in-bond concession is in operation;

“in-bond” used in relation to goods means goods entered under bond for the due exportation and landing thereof in a place outside the Island;

12/1985
Sch.

“in-bond concession” means a concession granted to a warehouse-keeper by the Commissioner whereby goods are warehoused on conditions which permit such goods to be sold in-bond to visitors to the Island.

PART V. *Loading and Exportation of Goods*

Certain
ships to
be entered
outwards.

133. The Master of every ship, other than a steamship as defined in section 2, in which any goods are to be exported, or his agent, shall, before any goods be taken on board, deliver to the proper officer at the port at which such ship shall have first arrived an entry outwards of such ship, verified by his signature, in the prescribed form, and con-

taining the several particulars indicated in or required thereby, and in such entry outwards the Master or his agent shall declare that no imported goods are left on board such ship other than such goods and stores as shall be specified in the entry outwards.

134. The Master of every ship to which the provisions of section 133 apply, shall, if required, obtain from the proper officer a certificate of rummage in the prescribed form. If he desires to obtain such certificate before the whole of the inward cargo of the ship has been discharged, he shall remove and stow the inward cargo remaining on board such ship in such manner as such officer shall direct in order to enable him to rummage the ship, and after the ship has been rummaged, shall stow the inward cargo remaining on board separately and keep it separate to the satisfaction of the proper officer from any coastwise or any outward cargo that may subsequently be put into such ship.

Rummage certificate may be granted before completion of discharge.

135. Before any aircraft or ship required to report at any port in the Island shall depart therefrom to load cargo at another port in the Island, the Master or his agent shall, in respect of each port at which he desires to load cargo, obtain from the proper officer a loading licence in duplicate in the prescribed form and containing the prescribed particulars and signed by such officer, and, before leaving the port at which such licence is issued, shall enter on both copies of the licence particulars of the cargo loaded and of any stores loaded or remaining on board from the inward voyage at such port.

Loading licence.

136. Where, under the provisions of the customs laws, the Commissioner shall permit any goods to be put on board any aircraft or ship at any place in the Island other than a port, the Master of such aircraft or ship shall, in respect of every such place at which he shall be permitted

Special loading licence. 12/1985 Sch.

12/1985
Sch.

to load, in addition to complying with any conditions which may be imposed by the Commissioner, obtain from the proper officer a special loading licence in duplicate in the prescribed form, and containing the prescribed particulars and signed by such officer. Before leaving the port at which any special loading licence shall have been issued the Master or his agent shall enter on both copies of the licence particulars of the cargo loaded and of any stores loaded or remaining on board at such port.

Procedure
after loading
under special
loading
licence.

137. After the loading of any goods under the authority of a special loading licence shall have been completed, the Master shall proceed with such aircraft or ship forthwith to an approved port, where all the provisions of the customs laws shall be complied with as nearly as may be, as if such goods had been loaded at such port, unless the proper officer shall otherwise direct.

Completion
and delivery
of licence
after load-
ing.

138. When loading has been completed at any port or place for which a loading licence or special loading licence has been issued, before the aircraft or ship departs from such port or place, the Master or his agent shall enter on both copies of the licence particulars of the cargo loaded and of any stores taken on board at such port or place, showing the number of packages loaded and the quantity and description of the goods, and shall sign the same and deliver one copy to the proper officer at the port of loading before leaving the port, or, if the goods have been loaded at a place other than a port, then at such place and to such person as shall be named in the licence; and the Master or his agent shall deliver the remaining copy of the licence together with the content required to be delivered to the proper officer in accordance with sections 160 and 163.

Penalty for
breach of
sections 133
to 138.

139. If any goods shall be taken on board any aircraft or ship at any port or place contrary to the provisions of sections 133 to 138 or if any of the requirements of the said

sections 133 to 138 shall not be observed, the Master of such aircraft or ship or his agent shall incur a penalty of one hundred thousand dollars, unless the same shall be explained to the satisfaction of the Commissioner and the goods shall be forfeited.

14/2004
Sch.

14/2004
Sch.

140. Nothing contained in sections 133 to 138 shall be deemed to authorize the loading of goods except from an approved place of loading, unless specially allowed by the Commissioner under section 146.

Limitation of authority granted as aforesaid.
12/1985
Sch.

141. The Minister may by notice to the Commissioner in writing under his hand direct that any or all of the provisions of sections 135 to 139 shall not apply to aircraft either generally or in any particular case during any period specified in the notice.

Non-application to aircraft.

142. On arrival at any port or place in the Island of any ship, other than a steamship as defined in section 2, about to deliver cargo at more than one port or place in the Island, or having on board any goods duly reported for exportation in the same ship, it shall be lawful, subject to any regulations made under this Act, or to such conditions as the Commissioner may deem necessary, to allow the entry outwards of such ship, and to permit the loading of goods for exportation in such ship or for carriage coastwise as provided in section 173, before the whole of the goods imported in such ship shall have been discharged therefrom, the complete separation of such goods from the inward cargo and from any cargo remaining on board for exportation being effected to the satisfaction of the proper officer.

Restrictions as to carriage coastwise.

12/1985
Sch.

143. No person shall export or attempt to export any warehoused goods, or goods liable to duties of customs transferred from an importing aircraft or ship, or goods entitled to drawback on exportation (not being wines, spirits, tobacco, cigars, cigarillos, or cigarettes), nor shall

Restriction on exportation of certain goods.

enter or attempt to enter any such goods for exportation in any ship of less burden than 5 tons.

Penalty.

144. Any person who shall export or enter or attempt to export or enter, any goods contrary to section 143 or place any goods on board a ship of less size than is thereby permitted for exportation shall incur a penalty of one hundred thousand dollars, and such goods shall be forfeited.

14/2004
Sch.

General
provisions as
to loading
and exporta-
tion of
goods.

145. Except as provided in section 146, no goods shall be put on board any aircraft or ship for exportation or use as stores, or be put into any vessel to be water-borne, or be water-borne, to be put on board any aircraft or ship for exportation or use as stores from any port or place in the Island on Sundays or public holidays, nor except between 8 o'clock in the morning and 4 o'clock in the afternoon on any other day, nor from any place not being an approved place of loading, nor without the authority of the proper officer, nor before due entry outwards of the exporting aircraft or ship, if the same is by law required to be entered outwards, nor before such goods are duly entered, and no goods having been put into any vessel to be water-borne to any aircraft or ship for exportation or use as stores, shall be put on board the exporting aircraft or ship outside the limits of any port; and it shall be lawful for any officer to open and examine all goods put on board any aircraft or ship or brought to any place in the Island to be put on board an aircraft or ship for exportation or for use as stores.

Commis-
sioner may
relax con-
ditions of
shipment.

146. Notwithstanding the provisions of section 145, it shall be lawful for the Commissioner to permit any goods to be put on board any aircraft or ship on such days, at such times, from or at such places, and under such conditions as he may either generally or in any particular case direct, and in like manner the Commissioner may direct what goods need not be entered by the exporter until after

12/1985
Sch.

the departure of any aircraft or ship, but any such goods must be entered within twenty-four hours of such departure, unless the Commissioner shall otherwise allow:

Provided that where any goods are permitted to be entered after being put on board, the Commissioner may in such case require the agent of the Master or owner of the aircraft or ship to give security for the payment of any export duties of customs on any goods liable thereto under such conditions, and subject to such charges to be paid to the agent by the exporter of any such goods, as the Minister may prescribe.

12/1985
Sch.

147. Any goods which have been put into any vessel to be water-borne to any aircraft or ship for exportation or use as stores shall be taken directly and without delay to the aircraft or ship in which the same are to be exported or used as stores, and put on board forthwith; and every vessel in which the same are water-borne as aforesaid to any aircraft or ship shall, if so required by the Commissioner, be a ship licensed under section 174.

Vessels
loading
goods into
ship to
proceed
directly.
Licence.

12/1985
Sch.

148. No goods having been put on board any aircraft or ship in accordance with section 159, or for exportation, or as stores, shall be discharged in any part of the Island without the written permission of the proper officer, and except in accordance with such conditions as the Commissioner shall impose.

Permission
required to
discharge
goods
loaded.

12/1985
Sch.

149. If any person shall put or attempt to put any goods on board any aircraft or ship or discharge, or attempt to discharge, or deal with any goods in any way contrary to the provisions of section 145 to 148, such goods shall be forfeited and the person shall incur a penalty of two hundred thousand dollars.

Penalty for
breach of
sections 145
to 148.

14/2004
Sch.

150. If any officer shall place any lock, mark or seal upon any goods or stores taken on board any aircraft or ship in the Island, and such lock, mark or seal be wilfully

Penalty for
interfering
with goods
secured by
officer.

opened, altered or broken, or if such goods or stores be secretly conveyed away either while such aircraft or ship remains in the Island, or on her passage from one port or place in the Island to another before the final departure of such aircraft or ship on a flight or voyage to a place outside the Island, the Master shall incur a penalty of fifty thousand dollars, and such goods or stores shall be forfeited.

16/2000
S. 10.

Penalty for
attempting to
ship
prohibited
goods.

151. If any person shall put on board any aircraft or ship, or put off or put into any vessel to be water-borne to any aircraft or ship for exportation or use as stores, or bring to any aerodrome, Customs area, quay, wharf or any place whatever in the Island for exportation or use as stores, or export any goods prohibited to be exported, or any goods the exportation of which is restricted, contrary to such restriction, or attempt to perform or be knowingly concerned in the performance of any of the aforesaid acts, he shall (except as otherwise provided in section 144) incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods and all such goods shall be forfeited.

35/1997
S. 2.

Bond to be
given in
certain cases.

152. Before any warehoused goods, or goods entitled to any drawback on being put on board an aircraft or ship for use as stores or for exportation, or goods exportable only under particular rules, regulations or restrictions, or goods liable to duties of customs intended for transfer from an importing to an exporting aircraft or ship shall be permitted to be entered for use as stores, or for exportation or for transfer as aforesaid, the exporter shall give such security by bond as the Commissioner may require that such goods shall be duly put on board the aircraft or ship for which the same are entered and shall be used as stores (if so

12/1985
Sch.

entered) or else exported to and discharged at the place for which they are entered within such times as the Commissioner may deem reasonable, or be otherwise accounted for to his satisfaction.

12/1985
Sch.

153. If any goods for which bond is required under section 152, or any goods liable to export duties of customs be put on board any aircraft or ship, or brought to any aerodrome, Customs area, quay, wharf or other place to be put on board an aircraft or ship and shall on examination by the proper officer be found not to agree with the entered particulars thereof, or being goods on which drawback shall be claimed or allowed shall be found to be goods not entitled to drawback, all such goods shall be forfeited; and the exporter of such goods shall in every such case incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

Offences
relating to
bonded
goods.

35/1997
S. 2.

154. If any goods for which bond is required under section 152 after being entered and put on board an aircraft or ship shall be used otherwise than as stores (if so entered) or shall not be duly exported to and discharged at the declared destination (such goods not having been discharged in the Island with the permission of the proper officer as provided in section 148) or otherwise accounted for to the satisfaction of the Commissioner, the same shall be forfeited; and the Master of the aircraft or ship in which such goods shall have been put, shall incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

Penalty
for not
exporting.

35/1997
S. 2.

155. If any person who shall have entered any goods for which bond is required under section 152 shall fail, in case such goods or any of them shall not be duly put on board the aircraft or ship for which the same shall have been entered, to attend the proper officer within twenty-four hours of the

Short
loading of
bonded
goods.

time of clearance of the aircraft or ship or such further period as the Commissioner may allow, and notify such officer of the short loading of such goods, and re-warehouse or re-enter for exportation or use as stores in some other aircraft or ship within such period of twenty-four hours any such goods which shall have been removed from a warehouse for exportation or use as stores, any such goods entered as aforesaid shall be forfeited and the person shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Exporter to
notify short
loading of
non-bonded
goods.

156. If any exporter who shall have entered any goods, not being goods for which bond is required, for exportation in any aircraft or ship shall fail, in case such goods or any of them shall not be duly put on board the aircraft or ship for which the same are entered, to attend the proper officer within twenty-four hours after the departure of such aircraft or ship, or such period as the Commissioner may allow, and notify such officer of the short loading of such goods, he shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Commis-
sioner may
allow ship-
ment of
stores.

157. Notwithstanding anything to the contrary contained in the customs laws, and subject to any regulations made under this Act, the Commissioner may, upon due request being made, permit the Master of any aircraft or ship departing from any port in the Island upon a flight or voyage to any place outside the Island to take on board stores (not being goods prohibited to be exported) for the use of such aircraft or ship, and of the Master, crew and passengers, upon payment of any export duty leviable on the like kind of goods exported and upon such other terms and conditions as the Commissioner may direct, and in such quantities as the Commissioner in his discretion shall deem reasonable; and every such request shall be made on the prescribed form and contain the particulars required thereby or indicated therein, and shall be signed by the Master or his agent; and no stores shall be put on board for the use of any aircraft or ship, nor shall any articles taken on board any

12/1985
Sch.

aircraft or ship be deemed to be stores, except such as shall be or have been put on board such aircraft or ship in accordance with the provisions hereof.

158. The provisions of the customs laws with reference to the exportation of warehoused goods, so far as they are applicable, shall be deemed to apply to and include goods liable to duties of customs transferred from an importing to an exporting aircraft or ship, and goods exported on drawback.

Drawback and transshipment of goods.

159. Notwithstanding any contrary provisions of the customs laws, and subject to any regulations made under this Act, it shall be lawful for the Commissioner to permit the loading of passengers' baggage, and also to permit any person to take on board any aircraft or ship any goods for sale or delivery to the passengers, officers, or crew of such aircraft or ship, or for such other purpose as the Commissioner shall allow, under such conditions as he may either generally or in any particular case direct; but if any goods, not being part of the cargo or authorized stores of any aircraft or ship, shall be taken on board any aircraft or ship, which is about to proceed to any place outside the Island, or which has any goods remaining on board thereof from a voyage from a place outside the Island, or if any attempt shall be made to put any such goods on board any such aircraft or ship without the permission of or contrary to any conditions directed as aforesaid by the Commissioner, or otherwise contrary to the customs laws the same shall be forfeited.

Loading of goods other than cargo or stores. 12/1985 Sch.

PART VI. *Departure and Clearance of Aircraft and Ships*

160. The Master of every aircraft or ship, not being a steamship as defined in section 2, shall immediately before leaving the Island on any flight or voyage to any place out-

Clearance of aircraft and ships other than steamships.

[The inclusion of this page is authorized by L.N. 87/1986]

side the Island attend before the proper officer, either at the port at which the report of such aircraft or ship shall or ought to have been delivered, or at the port where or nearest to which any cargo shall last have been loaded on board or discharged from such aircraft or ship, and shall answer all such questions as shall be demanded of him by such officer concerning the aircraft or ship, the cargo, the stores, the baggage, the officers, crew and passengers and the flight or voyage, and shall deliver to such officer a content of such aircraft or ship in the prescribed form, and containing the prescribed particulars, as far as the same can be known by him, and shall make and subscribe the declaration at the foot thereof in the presence of such officer. In the case of aircraft the content when signed by the proper officer shall be the clearance and authority for the departure of such aircraft from the Island.

Master
to deliver
account of
cargo and
stores.

161. In addition to observing the requirements of section 160, the Master or his agent shall deliver to and sign in the presence of the proper officer an account of all cargo and stores taken on board such ship within the Island, as well as of any cargo and stores which shall have been brought to the Island in such ship, and shall have remained on board for exportation or for use as stores; and such account shall be in the prescribed form and shall contain the names of **all passengers, and of the Master, officers and crew of such ship**, and, when signed by the proper officer, shall be the clearance and authority for the departure of such ship from the Island.

Penalty for
not clearing.

162. If any such aircraft or ship shall depart from the Island to any place outside the Island without the delivery of such content in accordance with section 160 or if any ship as aforesaid shall so depart without authority having been granted under section 161 the Master of such aircraft or

ship shall incur a penalty of one hundred thousand dollars, and if any of the particulars contained in any such content or account as aforesaid be false, or if any of the required particulars be omitted therefrom and such omission be not explained to the satisfaction of the Commissioner, the Master or agent shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

14/2004
Sch.

163.—(1) No steamship as defined in section 2 shall depart from any port or place in the Island to any place outside the Island until the Master or his agent shall have satisfied the proper officer that all the provisions of the customs laws have been fulfilled, whereupon, except he has decided to withhold clearance in accordance with any other provision of law, such officer shall deliver to the Master or his agent a clearance in the prescribed form; and such clearance shall be the authority for the departure of such steamship as aforesaid.

Clearance of
steamships.

(2) If any steamship as defined in section 2 shall depart from any port or place in the Island to any place outside the Island without authority having been granted under subsection (1), the Master or his agent shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

(3) The Master of any steamship as defined in section 2 or his agent, shall, either before or not later than twenty-four hours (or such further period as the Commissioner may allow) after the time of departure of such steamship from its final position, anchorage or berth in the Island to any place outside the Island, deliver to the proper officer at such port or place (or at the port nearest thereto as the Commissioner may allow), a content of such steamship, in the prescribed form and containing the several particulars therein required as far as the same can be known to him, and shall make and subscribe the declaration at the foot thereof in the presence of such officer and shall answer

12/1985
Sch.

12/1985
Sch.

all such questions as shall be demanded of him by such officer concerning the ship, the cargo, the stores, the baggage, the officers, crew and passengers, and the voyage; and if such Master or agent shall fail to deliver such content, or if any of the particulars contained in such content, be false, or if any of the required particulars be omitted from such content, and such omission be not explained to the satisfaction of the Commissioner, such Master or agent shall incur a penalty one hundred thousand dollars.

14/2004
Sch.

Minister
may
prescribe
special
conditions as
to clearance.
12/1985
Sch.

164. Notwithstanding the provisions of section 163 or any other provisions of the customs laws relating to the departure and clearance of aircraft and ships, it shall be lawful for the Minister, by notice in the *Gazette*, or by notice under his hand addressed to the Commissioner to require all aircraft and ships whatsoever, or any particular aircraft or ship or ships to be cleared either in accordance with the provisions of sections 160 to 162, or in any manner specified in the said notice; and if any aircraft or ship shall depart contrary to the provisions of any such notice in the *Gazette*, or of any other notice as aforesaid of which the Master or agent shall have been informed by the Commissioner in writing, the Master or agent shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Clearance in
ballast.

12/1985
Sch.

165. If any ship shall depart in ballast from the Island to any place outside the Island, not having any goods on board except stores duly shipped as such, nor any goods reported inwards for exportation in such ship the Commissioner shall on the application of the Master or his agent, clear such ship in ballast; and the Master of such ship or his agent shall comply with the customs laws as if such ship had cargo on board, except that the words "in ballast" shall be written on the prescribed forms in the places which are provided for particulars of cargo.

166. For the purposes of section 165, ships having only passengers with their *bona fide* baggage on board in addition to stores as aforesaid, shall be deemed to be in ballast.

Ships with only passengers and baggage deemed in ballast.

167. Any officer may go on board any aircraft or ship within the Island or the waters thereof, and demand the clearance of such aircraft or ship, and if the Master shall not produce the same, or if the Master of any aircraft or ship whatsoever which may be boarded as aforesaid by any officer shall not answer or shall not truly answer such questions concerning the aircraft or ship, the cargo, stores, baggage, officers, crew, passengers and intended flight or voyage as may be demanded of him, he shall incur a penalty of one hundred thousand dollars.

Cargo, &c., to be produced to officer on demand.

14/2004 Sch.

168. If there be any goods or stores on board any aircraft or ship which may have been boarded by an officer within the Island or the waters thereof not contained in the content or account (if any) required to be signed as the clearance of such aircraft or ship such goods or stores shall be forfeited, and the Master shall incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods.

Goods not contained in account forfeited.

35/1997 S. 2.

169. If any officer, having boarded any aircraft or ship within the Island or the waters thereof after clearance, shall discover that any goods which were loaded in the Island on board thereof as stores or for exportation or which at the time of clearance remained on board from the inward voyage, be no longer on board such aircraft or ship (unless the same shall have been discharged in the Island, with the permission of the proper officer, as provided in section 148, or, being stores remaining on board from the inward voyage, shall in the opinion of the proper officer not exceed the quantity which might fairly have been consumed, having regard to the period during which such aircraft or ship shall

Penalty for failure to produce goods.

35/1997
S. 2.

have been within the Island or the waters thereof), the Master shall incur a penalty of not more than treble the value of every package or parcel of such goods not on board.

Deficiency
in stores,
&c.

170. If any aircraft or ship, having departed from the Island on a flight or voyage to a place outside the Island and having returned within the Island or the waters thereof, is boarded by an officer, and if such officer shall discover any deficiency in the stores of such aircraft or ship which in his opinion shall be in excess of the quantity which might fairly have been consumed, having regard to the period which has elapsed between the departure of such aircraft or ship and the discovery of the deficiency, the Master shall pay the duties on such deficiency at the rate chargeable on similar goods imported, and in addition shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Officers to
be set
down by
departing
aircraft or
ship, &c.

171. If any aircraft or ship departing from the Island shall not bring to at the proper boarding station for setting down officers, or for any other purpose required by the customs laws, or shall depart on a flight or voyage with any officer on board without the assent of such officer, the Master shall incur a penalty of two hundred thousand dollars, unless the same shall be explained to the satisfaction of the Commissioner.

14/2004
Sch.

PART VII. *Coasting Trade*

Definition.

172. Except as provided in section 173, all trade by sea or by air from any one part of the Island to any other part thereof shall be deemed to be coasting trade, and all aircraft and ships while employed therein shall be deemed to be coasting aircraft and coasting ships, and if any doubt shall at any time arise as to what, or to or from what parts of the Island shall be deemed a passage by sea, the Minister may

determine and direct in what cases the trade by water from one port or place in the Island to another of the same shall or shall not be deemed a trade by sea within the meaning of the customs laws.

173. Notwithstanding any provisions in the customs laws to the contrary, it shall be lawful for the proper officer, on the arrival from a place outside the Island of any aircraft or ship having on board cargo intended to be delivered at more than one port in the Island, to permit such aircraft or ship to convey goods from any port at which such aircraft or ship shall partially discharge her cargo to her port or ports of destination in the Island for delivery there, upon the complete separation of such goods from the inward cargo still on board being effected to the satisfaction of the proper officer, but such conveyance of goods from one port to another shall not constitute the aircraft or ship a coasting aircraft or coasting ship within the meaning of the customs laws. The loading, unloading and conveyance of goods under this section shall be subject to any regulations made under this Act and to such conditions as the Commissioner may impose, and if any goods shall be loaded, unloaded, conveyed or dealt with contrary to such regulations or conditions the goods shall be forfeited, and the Master of the aircraft or ship shall incur a penalty of fifty thousand dollars.

Exception in regard to aircraft and ships from parts beyond the seas.

12/1985 Sch.

14/2004 Sch.

174. It shall be lawful for the Minister to prescribe by regulation for the licensing of ships to trade coastwise.

Licence for coasting ship.

175. Every ship trading coastwise shall have her name and the number of her licence, if required to be licensed, painted on each bow in letters of not less than six inches high and of proportionate width, in white on a dark ground or in black on a light ground. The Master of every ship in respect of which this section is contravened shall incur a penalty of ten thousand dollars, and the ship may be seized by any officer and detained until such penalty is paid.

Coasting ship to display name and number.

14/2004 Sch.

Coasting
aircraft or
ship to take
only coast-
wise cargo.

176. No goods shall be carried in any coasting aircraft or ship except such as shall be loaded to be carried coastwise at some port or place in the Island.

Offences.

177. If any coasting aircraft or ship shall deviate from its flight or voyage, unless forced by unavoidable circumstances, whereof the proof shall lie on the Master of such aircraft or ship, or if the Master of any coasting aircraft or ship which shall have deviated from its flight or voyage, or shall have taken on board any wrecked or other goods or discharged any goods in the course of a flight or voyage from one part of the Island to another shall not enter an account of the circumstances and of any goods so taken on board or discharged in the cargo book hereinafter referred to, and proceed forthwith direct to the nearest port in the Island, and declare and explain the same to the satisfaction of the proper officer, and deliver all goods so taken on board into his care, such Master shall incur a penalty of four hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until such penalty is paid.

14/2004
Sch.

Special
conditions
as to
certain
goods.
12/1985
Sch.

178. Tobacco, cigars, cigarillos, cigarettes, wines and spirits (except spirits the produce of the Island removed under the provisions of the excise laws or with the permission of the Commissioner), shall not be put on board any aircraft or ship for carriage coastwise except at an approved place of loading or sufferance wharf and in the presence or with the authority of an officer, and if any such goods shall be put on board contrary hereto, or if any attempt is made so to put them, such goods shall be forfeited and the master of the aircraft or ship shall incur a penalty of two hundred and fifty thousand dollars.

14/2004
Sch.

Coastwise
cargo not to
be put on
board on
Sunday, &c.

179. If any goods shall be discharged from any aircraft or ship arriving coastwise, or from any vessel into which the same shall have been put to be landed, or be put on board or be put into any vessel to be water-borne, or be water-borne to be put on board any aircraft or ship for carriage

coastwise on Sundays or public holidays, or except between 8 o'clock in the morning and 4 o'clock in the afternoon on any other day, save with the written permission of the Commissioner, the same shall be forfeited, and the Master of the aircraft, ship or vessel shall incur a penalty of fifty thousand dollars, and the aircraft, ship or vessel may be seized by any officer and detained until such penalty is paid.

14/2004
Sch.

180. If any person shall put on board any coasting aircraft or ship, or put off, or put into any vessel to be put on board any coasting aircraft or ship, or bring to any aerodrome, Customs area, quay, wharf or any place whatever in the Island for carriage coastwise or carry coastwise any goods prohibited to be carried coastwise, or any goods the carriage coastwise of which is restricted, contrary to such restriction, or attempt to perform, or be knowingly concerned in the performance of any of the aforesaid acts, he shall incur a penalty of one hundred thousand dollars, and all such goods shall be forfeited.

Prohibited
goods.

14/2004
Sch.

181. The Master of every coasting aircraft or ship shall keep or cause to be kept a cargo book, stating the name of the aircraft or ship, the Master, and the port in which the aircraft or ship belongs, and of the port or place to which it is bound on each flight or voyage, and unless the Commissioner otherwise directs, shall at every port or place of loading enter in such book the name of such port or place, and an account of all goods there taken on board such aircraft or ship, stating the descriptions of the packages, and the quantities and descriptions of any goods stowed loose, and the names of the respective consignors and consignees, and shall at every port or place of discharge of such goods note the respective days on which the same, or any of them, are delivered out of such aircraft or ship, and the respective times of departure from every port or place of loading and of arrival at every port or place of discharge.

Master to
keep cargo
book.

12/1985
Sch.

Master to
produce
cargo book
on demand.

182. The Master of every coasting aircraft or ship shall, on demand, produce the cargo book for the inspection of any officer, who shall be at liberty to make any note or remark therein; and if upon examination any package entered in the cargo book as containing imported goods shall be found not to contain such goods, such package with its contents shall be forfeited; or if any package shall be found to contain imported goods not entered in such book such goods shall be forfeited and the master of the aircraft or ship shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Penalty for
failure to
keep cargo
book
correctly.

183. If such Master shall fail correctly to keep or cause to be correctly kept such cargo book, or to produce the same, or if at any time there be found on board such aircraft or ship any goods not entered in such book as loaded, or any goods noted as delivered, or if any goods entered as loaded and not noted as delivered be not on board, the Master of such aircraft or ship shall incur a penalty of one hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until such penalty is paid.

14/2004
Sch.

Minister
may impose
special con-
ditions.

184. Notwithstanding any other provisions contained in this Act, it shall be lawful for the Minister, by notice in the *Gazette*, to require the Masters or agents of all or any coasting aircraft or ship or ships to deliver to the Commissioner, prior to the departure from any port or place of such aircraft or ship or ships, an account of all cargo and stores taken on board, in such manner as may be specified in the said notice; and if any coasting aircraft or ship shall depart contrary to the provisions of any such notice the Master and owner shall each incur a penalty of one hundred thousand dollars.

12/1985
Sch.

14/2004
Sch.

Form of
cargo book.

185. The cargo book shall be in the prescribed form, and shall contain such particulars in addition to, or in lieu of the particulars required by sections 181 to 184 as the form prescribed as aforesaid shall indicate or require; and if such

cargo book is not in the form prescribed as aforesaid, the Master of the aircraft or ship shall incur a penalty of one hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until such penalty is paid.

14/2004
Sch.

186. The carriage of passengers, officers and crew coastwise, whether in a coasting aircraft or ship or not, shall be subject to any regulations made under this Act.

Coastwise
passengers,
etc.

187. Before any coasting aircraft or ship shall depart from her port or place of loading, her cargo book, containing the several particulars required by this Act, and signed by the Master, shall be delivered to the proper officer, who shall return it dated and signed by him, and such cargo book shall be the clearance of the aircraft or ship for the voyage; and if the Master shall fail to deliver such cargo book he shall incur a penalty of one hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until such penalty is paid.

Master to
deliver
cargo book
to officer
before
departure.

14/2004
Sch.

188. Any coasting aircraft or ship taking cargo on board at a place where no officer is stationed, to be carried coastwise may depart from such place without delivering such cargo book, on condition that the Master of the aircraft or ship shall produce the cargo book to the proper officer at the first place where an officer is stationed at which such aircraft or ship arrives after loading, and the officer shall thereupon sign such book, if satisfied as to its correctness.

Procedure
where no
officer is
stationed.

189. Immediately after the arrival of any coasting aircraft or ship at her port or place of discharge and before any goods be unloaded, the cargo book with the name of the place or wharf where the cargo is to be discharge noted thereon shall be delivered to the proper officer, who shall

Master to
deliver
cargo book
on arrival.

note thereon the date of delivery; provided that a coasting aircraft or ship having cargo duly loaded to be carried coastwise may discharge at a place where no officer is stationed without delivering the cargo book as herein required, on condition that the cargo book, containing an account of the cargo so discharged, is produced to the proper officer at the first place where an officer is stationed at which the aircraft or ship arrives after discharging; and if any goods are unloaded or if any goods are loaded on board any aircraft or ship and carried coastwise, or be brought to any port or place in the Island for that purpose, contrary to the customs laws, such goods shall be forfeited and the master of the aircraft or ship shall incur a penalty of one hundred thousand dollars.

14/2004
Sch.

Commis-
sioner may
vary
procedure.
12/1985
Sch.

190. Notwithstanding anything hereinbefore contained, the Commissioner may permit the loading and clearance and the entry and unloading of any coasting aircraft or ship and goods under such regulations or conditions as he may make or direct.

Cargo book,
&c., to be
delivered to
officer on
demand.

191. Any officer may go on board any coasting aircraft or ship in any port or place in the Island or on any coasting ship at any period of her voyage, and search such aircraft or ship and examine all goods on board, and all goods then being loaded or unloaded, and demand all books or documents which ought to be on board such aircraft or ship, and may require all or any such books or documents to be brought to him for inspection, and the Master shall answer all such questions concerning the aircraft or ship and its cargo, officers, crew, passengers and the flight or voyage as may be put to him by such officer; and if the Master shall refuse to produce such books or documents on demand, or to bring the same to such officer when required, he shall incur a penalty of one hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until the penalty is paid.

14/2004
Sch.

192. It shall be lawful for the Commissioner, subject to such conditions as he may require to be observed to permit the Master of any aircraft or ship bringing any goods coastwise to an approved port to enter such aircraft or ship and goods or any of them outwards for exportation without first discharging the same.

Goods carried coastwise may be entered outwards in certain cases.

PART VIII. *Prevention of Smuggling*

193. If any aircraft or ship shall be found or discovered to have been within the waters of the Island, or within or over the Island, which has any secret or disguised place adapted for concealing goods, or any device adapted for running goods, or which has on board or in any manner attached thereto, or which has had on board or in any manner attached thereto, or which is conveying or has conveyed in any manner any goods imported contrary to the customs laws, or from which any part of the contents of such aircraft or ship shall have been thrown overboard to prevent seizure, or on board which any goods shall have been staved or destroyed to prevent seizure, then in every such case every person who shall be found or discovered to have been on board any such aircraft or ship shall incur a penalty of two hundred and fifty thousand dollars, and all such goods shall be forfeited; provided that no person shall be liable to conviction under this section unless there shall be reasonable cause to believe that such person was concerned in or privy to the illegal act or thing proved to have been committed.

Penalty on persons found on board smuggling ships.

14/2004 Sch.

194. Every ship of less than 250 tons burden on board which, or in respect of which, any offence against section 193 shall be committed shall be forfeited.

Smuggling ships under 250 tons forfeited.

195.—(1) With regard to aircraft or any ship of or exceeding 250 tons burden, on board or in respect of which any offence against section 193 shall be committed, such aircraft or ship shall not be forfeited for such offence, but the following provisions shall apply—

Penalty on smuggling aircraft and ships of 250 tons or more.

- 14/2004
Sch.
- (a) the Commissioner shall have power, subject to appeal to the Minister, to fine any such aircraft or ship in any sum, not exceeding one hundred thousand dollars, in any case where in his opinion a responsible officer (as hereinafter defined) of such aircraft or ship is implicated either actually or by neglect;
- 14/2004
Sch.
- (b) for the purpose of enforcing such fine, the Commissioner shall have power to require the deposit in his hands, at the port where such aircraft or ship shall be, of such sum, not exceeding one hundred thousand dollars, as he may think right, pending the ultimate decision, and in default of payment of such deposit the Commissioner shall have power to withhold clearance and to detain the said aircraft or ship;
- 14/2004
Sch.
- (c) if in any case the Commissioner shall consider that the fine of one hundred thousand dollars aforesaid will not be an adequate penalty against any such aircraft or ship for the offence committed thereon, it shall be lawful for him to take proceedings for condemnation of the said aircraft or ship in a penalty not exceeding five hundred thousand dollars, at the discretion of the Court. And for this purpose the Commissioner may, as to any aircraft or ship referred to in this section, require the deposit in his hands as aforesaid of a sum not exceeding five hundred thousand dollars, to abide the decision of the Court, and in default of payment of such deposit the Commissioner may withhold clearance and detain such aircraft or ship;
- 14/2004
Sch.
- (d) no claim shall be made against the Commissioner for damages in respect of the payment of any deposit, or the detention of any aircraft or ship under this section.
- 12/1985
Sch.

(2) The expression "responsible officer" in this section shall include the Master, mates and engineers of any ship, and in the case of a ship carrying a passenger certificate, the purser or chief steward, and where the ship is manned by Asiatic seamen, the serang or other leading Asiatic officer, and, in the case of an aircraft, the pilot, navigator, chief steward or chief engineer. The expression "neglect" in this section shall include cases where goods unowned by any of the crew are discovered in a place or places in which they could not reasonably have been put or remained if the responsible officer or officers having supervision of such place or places had exercised proper care at the time of the loading of the aircraft or ship or subsequently.

196. If any ship within the waters of the Island shall not bring to upon the proper signal made by any vessel or boat in Her Majesty's service or in the service of the customs, whereupon chase shall be given, and any person on board such ship shall during chase or before such ship shall bring to, or upon bringing to throw overboard any part of her contents, or shall stave or destroy any part thereof to prevent seizure, such ship shall be forfeited.

Ship forfeited for offence during chase.

197. If any aircraft or ship liable to seizure or examination under the customs laws shall not bring to when required so to do and so remain for such period as the boarding officer shall require, the Master of such aircraft or ship shall incur a penalty of ten thousand dollars.

Penalty for not bringing to.

12/1985 Sch.

198.—(1) If any person shall maliciously shoot at any aircraft or ship in the service of the customs or shall maliciously shoot at, maim or wound any officer in the execution of his office or duty, or with violence commit any of the offences mentioned in subsection (4), every person so offending, and every person aiding, abetting or assisting therein

Offences by smuggling, &c., against officers.

42/1969
3rd Sch.

shall be guilty of felony; and being convicted thereof shall be liable to imprisonment with or without hard labour for any term not exceeding fifteen years.

42/1969
3rd Sch.

(2) If any person engaged, or who shall have been engaged, in the commission of any offence against the customs laws be armed with firearms or other offensive weapons, or whether so armed or not, be disguised in any way, or being so armed or disguised shall be found with any goods liable to forfeiture under the customs laws, he shall be guilty of an offence, and being convicted thereof shall be liable to imprisonment with or without hard labour for any term not exceeding five years.

14/2004
Sch.

(3) If any person shall by any means procure or hire, or shall depute or authorize any other person to procure or hire any person to assist in any evasion of the customs laws, he shall on conviction be liable to imprisonment with or without hard labour for any term not exceeding three years.

14/2004
Sch.

(4) If any person shall stave, break, or destroy any goods to prevent seizure thereof by an officer or other person authorized to seize the same, or shall rescue or stave, break or destroy to prevent the securing thereof any goods seized by an officer or other person authorized to seize the same, or rescue any person apprehended for any offence punishable by a pecuniary penalty or imprisonment under the customs laws, or prevent the apprehension of any such person, or obstruct any officer going, remaining or returning from on board an aircraft or ship within the Island or the waters thereof, or in searching an aircraft or ship, or in searching a person liable to be searched under the customs laws, or in seizing any goods liable to forfeiture, or otherwise acting in the execution of his duty, or attempt or endeavour to commit, or aid, abet or assist in the commission of any of the offences mentioned in this subsection, he shall for each such offence incur a penalty of one hundred thousand dollars.

14/2004
Sch.

(5) If any person, not being an officer, takes or assumes the name, designation, appearance or character of an officer for the purpose of thereby obtaining admission into any aircraft, ship, house or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, he shall, in addition to any other punishment to which he may be liable for the offence, be liable, on conviction, to be imprisoned, with or without hard labour, for any term not exceeding three months.

(6) In this section "violence" means any criminal force or harm to any person, or any criminal mischief to any property, or any threat or offer of such force, harm or mischief, or the carrying or use of deadly, dangerous or offensive weapons in such manner as that terror is likely to be caused to any person, or such conduct as is likely to cause in any person a reasonable apprehension of criminal force, harm or mischief to them or to their property.

199.—(1) No person shall make or cause to be made, or aid, or assist in making any signal in or on board or from any aircraft or ship, or on or from any part of the Island, for the purpose of giving notice to any person on board any smuggling aircraft or ship, whether any person so on board, of such aircraft or ship be or be not within distance to notice any such signal; and if any person shall make or cause to be made, or aid or assist in making any such signal, he shall on conviction be liable to imprisonment, with or without hard labour for any term not exceeding three years.

Penalty for signalling to smuggling aircraft or ship.

14/2004
Sch.

(2) If any person be charged with having made or caused to be made, or for aiding or assisting in making any such signal as aforesaid, the burden of proof that such signal so charged as having been made with intent and for the purpose of giving such notice as aforesaid was not made with such intent and for such purpose shall be upon the defendant against whom such charge is made.

(3) Any person whatsoever may prevent any signal being made as aforesaid, and may go upon any lands for that purpose, without being liable to any indictment, suit or action for the same.

(4) For the purposes of this section any ship to which a signal is made as aforesaid and which changes its course or, if at anchor, weighs anchor or from which any signal is made following any signal made from an aircraft or ship or any part of the Island as aforesaid, shall for the purposes of this section be deemed to be a smuggling ship unless the contrary be proved.

Penalty for interfering with customs gear.

200. Every person who shall cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other way injure or conceal any aircraft, ship, buoy, anchor, chain, rope or mark in the charge of or used by any person for the prevention of smuggling, or in or for the use of the service of the customs, shall incur a penalty of one hundred thousand dollars.

14/2004 Sch.

Inter-meddling with goods found floating.

201. If any person, not being an officer, shall intermeddle with or take up any spirits or any goods prohibited to be imported or exported being in packages found floating upon or sunk into the sea, such spirits or goods prohibited to be imported or exported shall be forfeited, and every such person shall incur a penalty of two thousand dollars.

14/2004 Sch.

Writs of assistance.

12/1985 Sch.

202. All writs of assistance issued from the Supreme Court (which is hereby authorized and required to grant such writs upon application by the Commissioner) shall continue in force during the reign for which they were granted and for six months afterwards; and any officer having such writ of assistance may, by day or by night, enter into and search any house, shop, cellar, warehouse, room or other place, and in case of resistance break open doors, chests, trunks, and other packages, and seize and bring away any uncustomed or

prohibited goods, or any books or documents relating thereto, and put and secure the same in a Queen's warehouse.

203.—(1) If any officer has reasonable cause to suspect that— Special
warrant.
25/2003
S. 2.

- (a) any uncustomed or prohibited goods;
- (b) any books or documents relating to uncustomed or prohibited goods; or
- (c) any computer equipment that he reasonably believes to have been used in connection with and to contain evidence relating to the importation or attempted importation, landing, removal, conveyance, exportation or attempted exportation of any uncustomed, prohibited or restricted goods,

are harboured, kept or concealed in any house or other place in the Island, the officer may apply to a Resident Magistrate or Justice of the Peace for a special warrant in relation to such goods, books, documents or computer equipment.

(2) Where, in relation to an application under subsection (1), the Resident Magistrate or Justice of the Peace is satisfied that the issue of a special warrant is justified, he may grant the special warrant authorizing the officer to—

- (a) enter and search the house or other place referred to in his application, by day or by night;

- (b) open the lock of a door, box, safe or other receptacle which the officer has reasonable grounds to believe is relevant to the search, using such force as may be necessary; and

- (c) seize and carry away any uncustomed, restricted or prohibited goods, or any books or documents relating to such goods, or any such computer equipment as may be found therein.

(3) Computer equipment seized under subsection (2) shall not be retained for more than seventy-two hours.

Forfeiture on
conviction.
25/2003
S. 2.

203A. Where a person has been convicted of an offence against this Act in connection with goods seized under section 203, a Resident Magistrate may upon an application being made, order the forfeiture of the goods, notwithstanding that—

- (a) up until the time at which the goods were seized, such goods were in the possession of a third party; or
- (b) an application under section 214A has been rejected.

204.—(1) Any officer may upon reasonable suspicion stop and examine any carriage to ascertain whether any uncustomed or prohibited goods are contained therein; and, if none shall be found, the officer shall not on account of such stoppage and examination be liable to any prosecution or action at law; and any person driving or conducting such carriage refusing to stop or allow such examination when required by any officer shall incur a penalty of one hundred thousand dollars.

Officer
may stop
carriage.

14/2004
Sch.

(2) For the purposes of this section the expression “officer” includes all Constables.

205. Any officer, when on duty, and having the authority of the Commissioner, may patrol upon and pass freely either on foot or otherwise, along and over and enter any part of the Island other than a dwelling-house or other building, and any such officer so proceeding shall not be liable to any indictment, action or suit for so doing.

Officer
may patrol
freely.
12/1985
Sch.

Officer
may moor
patrol craft.

206. The officer in charge of any aircraft or ship employed for the prevention of smuggling may land or haul any such aircraft or ship upon any part of the Island which shall be deemed most convenient for that purpose, and moor any such aircraft or ship on any part of the Island, and continue such aircraft or ship so moored as aforesaid for such time as he shall deem necessary and proper; and such officer shall not be liable to any indictment, action, or suit for so doing.

PART IX. *General*

General
penalty.

207. Save as otherwise provided in section 208 any person who shall be convicted of any offence against the customs laws for which no specific penalty is provided shall incur a penalty of ten thousand dollars.

35/1997
S. 2.

Penalty in
cases of
forfeiture.

208. Where any aircraft, ship, carriage or goods become liable to forfeiture under the customs laws, any person who shall be knowingly concerned in the act or omission which renders the same liable to forfeiture shall be guilty of an offence against this Act, and shall incur the penalty provided by this Act in respect of such offence, or, where no such penalty is provided, shall incur a penalty not exceeding treble the value of the goods seized and any such person may be arrested and detained by any officer, and taken before a Resident Magistrate or two Justices to be dealt with according to law:

35/1997
S. 2.

Provided that no person shall be arrested whilst actually on board any aircraft or ship in the service of a foreign state or country.

209.—(1) A person commits an offence if—

Penalty
for false
declara-
tions, etc.
3/2001
S. 8.

(a) in any matter relating to the customs, or under the control or management of the Commissioner, he—

(i) makes or subscribes or causes to be made or subscribed, any false declaration; or

(ii) makes or signs or causes to be made or signed, any declaration, certificate or other instrument, required to be verified by signature, which is false in a material particular;

(b) he makes or signs any declaration made for the consideration of the Commissioner, on any application presented to him, which is false in a material particular;

(c) where required by the customs laws to answer questions put to him by an officer acting in the execution of his duty—

(i) he refuses to answer such questions; or

(ii) he gives any answer which is false;

(d) he counterfeits or falsifies—

- (i) any document required by the customs laws or by or under the directions of the Commissioner; and
 - (ii) any instrument used in the transaction of any business or matter relating to the customs;
- (e) he wilfully uses any such document which is counterfeited or falsified;
- (f) he alters any document or instrument after it has been officially issued;
- (g) he counterfeits the seal, signature, initials or other mark of or used by, any officer for any purpose in the conduct of business relating to the customs or under the control or management of the Commissioner; or
- (h) on any document or instrument required for the purposes of the customs laws, he counterfeits or imitates the seal, signature, initials or other mark of or used by any other person, whether with or without the consent of that other person.

(2) A person who commits an offence under subsection (1) shall be liable to a penalty not exceeding five hundred thousand dollars or treble the value of the goods to which the offence relates, whichever is the greater.

210.—(1) Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.

Penalty for evading customs laws regarding imported or exported goods.

35/1997
S. 2.

(2) Where any person has been arrested or detained in respect of an offence against the provisions of subsection (1) and has been brought before a Justice, and it shall appear to such Justice that the value of such goods in respect of which such person has been so arrested or detained does not exceed ten thousand dollars, such Justice may proceed to deal summarily with the case, without requiring any information to be laid, and convict such person of such offence, and adjudge that such person shall, in lieu of any other penalty, forfeit any sum not

35/1997
S. 2.

less than the single value nor more than treble the value of such goods, including the duties of importation due thereon, and in default of payment of such sum of money, order the imprisonment of that person for any period not exceeding one month.

Penalty in relation to concealed goods, &c.

211. If any person shall import or export, or cause to be imported or exported, or attempt to import or export any goods concealed in any way, or packed in any package or parcel (whether there be any other goods in such package or parcel or not) in a manner calculated to deceive the officers of customs, or any package containing goods not corresponding with the entry thereof, such package and the goods therein shall be forfeited, and such person shall incur a penalty of not less than treble the import duties payable on the goods contained in such package nor more than treble the value of such goods.

35/1997
S. 2.

Power of Commissioner to purchase goods in certain cases.
3/2001
S. 9 (a).

212.—(1) Notwithstanding the provisions of section 211, if, upon the examination of any imported goods which are chargeable with duty upon the value thereof, it appears to the Commissioner that the value of such goods as declared by the importer and according to which duty is sought to be paid is not the true value thereof, the Commissioner shall act in accordance with subsection (1A).

3/2001
S. 9 (a).

(1A) The Commissioner may give notice in writing to the importer that—

- (a) the goods may be released upon payment by the importer of the amount of the estimated duty on the goods together with a deposit of not less than one-half of that amount within the time specified in the notice; and

- (b) failing receipt of the amounts as aforesaid, the goods shall be detained.

(1B) The amount of estimated duty referred to in subsection (1A) shall be brought to account as revenue. 3/2001
S. 9 (a).

(1C) Notice may be given under subsection (1A) by— 3/2001
S. 9 (a).

- (a) delivering the notice personally; or
- (b) transmitting the notice by post to the importer's place of abode or business, as stated in the entry.

(1D) The sum deposited as aforesaid shall be brought to account as revenue unless the importer, within three months or such further period as the Commissioner may in any special circumstances allow— 3/2001
S. 9 (a).

- (a) produces to the Commissioner satisfactory evidence of the value; and

(b) makes final entry of such goods,
in which case so much of sum deposited as shall be necessary shall be brought to account as revenue and the balance returned to the person who deposited the same.

(2) The Commissioner shall, within fifteen days after the detention of such goods, determine either that the goods are or may be correctly entered according to the value declared by the importer and permit the same to be delivered, or to retain the 12/1985
Sch.

same for the public use of the Island, in which latter case he shall cause the value at which the goods were declared by the importer and the duties already paid to be paid to the importer in full satisfaction for such goods; or he may permit such person, on his application for that purpose, to enter the goods according to such value and on such terms as he may direct.

(3) Such goods, if retained, shall be disposed of for the benefit of the Island, and if the proceeds arising therefrom, in case of sale, exceed the sums so paid, and all charges incurred by the Island, such surplus shall be disposed of as the Minister may direct.

Offering
goods for sale
under pre-
tence that
they are
smuggled.
14/2004
Sch.

213. If any person shall offer for sale any goods under pretence that the same are prohibited, or have been unloaded and removed without payment of duties, all such goods (although not liable to any duties, nor prohibited) shall be forfeited and the person shall incur a penalty of twenty-five thousand dollars.

General
provision as
to forfeiture.

214. Subject to the provisions of section 195, all aircraft, ships and carriages, together with all animals and things made use of in the importation, attempted importation, landing, removal, conveyance, exportation or attempted exportation of any uncustomed, prohibited or restricted goods, or any goods liable to forfeiture under the customs laws shall be forfeited; and all aircraft, ships, carriages and goods together with all animals and things liable to forfeiture, and all persons liable to be detained for any offence under the customs laws or under any law whereby officers are authorized to make seizures or detentions, shall or may be seized or detained in any place either upon land or water, by any person duly employed for the prevention of smuggling, or by any person having authority

from the Commissioner to seize or detain the same, and all aircraft, ships, carriages, and goods together with all animals and things so seized, shall forthwith be delivered into the care of the Commissioner; and the forfeiture of any aircraft, ship, carriage, animal or thing shall be deemed to include the tackle, apparel and furniture thereof, and the forfeiture of any goods shall be deemed to include the package in which the same are found and all the contents thereof.

12/1985
Sch.

214A.—(1) Where proceedings are taken for the forfeiture of any goods seized under—

Protection
of third
parties.
25/2003
S. 3.

- (a) the customs laws;
- (b) any other law by which officers are empowered to make seizures,

any person who claims an interest in the goods, may, before the forfeiture order is made, apply to the court for an order under subsection (2) showing cause why an order for forfeiture should not be made.

(2) The court shall, in relation to an application under subsection (1), make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest in the goods if the court is satisfied—

- (a) that the person was not in any way involved in the commission of the offence on which the seizure was grounded; and
- (b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—

- (i) for sufficient consideration; and
- (ii) without knowing, or having reasonable grounds to suspect that, at the time he acquired it, the goods were connected with the offence.

(3) Subject to subsection (4), where a forfeiture order has already been made against any goods, a person who claims an interest in the goods may, before the end of the period of two months commencing on the day on which the forfeiture order is made or such longer period as the court may allow, having regard to all the circumstances, apply to the court for an order under subsection (2).

(4) A person who—

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not, except with the leave of the court, be permitted to make an application under subsection (3).

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days written notice thereof to the Director of Public Prosecutions.

(6) An applicant or the Director of Public Prosecutions may in accordance with the rules of court, appeal to the Court of Appeal for an order under subsection (2).

(7) Where a person has obtained an order under subsection (2) and the period allowed by rules of court with respect to the making of appeals has expired or any appeal made pursuant to subsection (6) has been determined in the person's favour, the Minister shall direct that—

- (a) the goods or the part thereof to which the applicant's interest relates, be returned to the applicant within ninety-six hours; or
- (b) an amount equal to the value of the applicant's interest, as declared in the order, be paid to the applicant.

215.—(1) Whenever any seizure shall be made, unless in the possession of or in the presence of the offender, Master or owner, as forfeited under the customs laws, or under any law by which officers are empowered to make seizures, the seizing officer shall give notice in writing of such seizure and of the grounds thereof to the Master or owner of the aircraft, ship, carriage, goods, animals or things seized, if known, either by delivering the same to him personally, or by letter addressed to him, and transmitted by post to, or delivered at his usual place of abode or business, if known; and all seizures made under the customs laws or under any law by which officers are empowered to make seizures shall be deemed and taken to be condemned, and may be sold or otherwise disposed of in such manner as the Minister may direct, unless the person from whom such seizure shall have been made or the Master or owner thereof, or some person authorized by him shall within one calendar month from the day of seizure give notice in writing to the Commissioner that he claims the same, whereupon proceedings shall be taken for the forfeiture and condemnation thereof; provided that if animals or perishable goods are seized, they may by direction of the Commissioner be sold forthwith by public auction, and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof.

Procedure
on seizure.

12/1985
Sch.

12/1985
Sch.

(2) Where proceedings are taken as aforesaid for forfeiture and condemnation, the court may order delivery of the aircraft, ship, carriage, goods, animals or things seized to the claimant, on security being given for the payment to the Commissioner of the value thereof in case of condemnation.

12/1985
Sch.

Disposal of
seizure.

216. All seizures whatsoever which shall have been made and condemned under the customs laws, or any other law by which seizures are authorized to be made by officers, shall be disposed of in such manner as the Minister may direct.

Limit of
penalty.

217. Where a penalty is prescribed for the commission of an offence under this Act or any regulations made thereunder such offence shall be punishable by a penalty not exceeding the penalty so prescribed; provided that where by reason of the commission of any offence the payment of any customs duty has or might have been evaded the penalty imposed shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to impose a greater penalty, be not less than treble the amount of duty payable.

Governor-
General
may restore
seizure, &c.

218. When any seizure shall have been made, or any fine or penalty incurred or inflicted, or any person committed to prison for any offence against the customs laws, the Governor-General may direct restoration of such seizure whether condemnation shall have taken place or not, or waive or compound proceedings, or mitigate or remit such fine or penalty, or release such person from confinement either before or after conviction on any terms and conditions, as he shall see fit.

Commis-
sioner may
mitigate
penalty.
12/1985
Sch.

219. Subject to the approval of the Minister (which approval may be signified by general directions to the Commissioner) and notwithstanding anything contained in section 217, the Commissioner may mitigate or remit any penalty or restore anything seized under the customs laws at any time prior to the commencement of proceedings in any court against any person for an offence against the customs laws or for the condemnation of any seizure.

Rewards.
12/1985
Sch.

220. The Commissioner may, with the approval of the Minister, reward any person who informs him of any offence against the customs laws or assists in the recovery of any fine or penalty.

221. Where under the customs laws any special procedure is prescribed in regard to steamships, and where the owner of any steamship is not resident in the Island, it shall be the duty of the Master or owner of such steamship to appoint an agent in the Island for the purpose of performing any act which may under the customs laws be performed by the agent of the Master or owner of a steamship; and if the Master or owner of any steamship shall fail to appoint an agent as aforesaid, and until such agent be appointed or if such agent shall not give security when so required to the satisfaction of the Commissioner for the due observance of the customs laws, then such steamship shall be subject to the requirements of the customs laws applicable to ships other than steamships, and on failure or omission to perform any such requirement, the owner or Master shall be liable in respect of such failure or omission to all penalties that might be imposed upon them or either of them under the customs laws if such ship were not a steamship.

Steamship agents.

12/1985 Sch.

222. Every document submitted to the Commissioner or his officers for the purposes of the customs laws shall be in such form as may be prescribed, if any, and shall contain the particulars required by such form or indicated therein.

Documents, form of. 12/1985 Sch.

223.—(1) The importer, exporter or any person concerned in the importation or exportation of any goods shall, on the request of any officer made at any time within three years of the date of importation or exportation, as the case may be, or of the date of delivery to the proper officer of an entry for such goods, if the same have been entered, produce for the inspection of such officer the invoices, books of account and any other documents of whatever nature relating to such goods which the officer shall require, and shall answer such questions and make and subscribe such declarations regarding the weight, measure, strength, value, cost, selling price, origin and destination of such goods, and the name of the place whence or where any imported goods were consigned or transferred

Documents, production of.

from one aircraft or ship to another, as shall be put to him by the officer, and shall produce such evidence as the officer may consider necessary in support of any information so furnished; and if the importer or exporter or other person concerned as aforesaid shall neglect or refuse to carry out any of the provisions of this section, he shall incur a penalty not exceeding five hundred thousand dollars, and subject to section 212, the Commissioner may, on such neglect or refusal, refuse entry or delivery or prevent shipment of the goods, or may allow entry, delivery or shipment of the goods upon such terms and conditions, and upon deposit of such sum, pending the production of the proper documents and declarations, as he shall see fit to impose or require.

3/2001
S. 10 (a).

(2) The deposit made in accordance with subsection (1) shall be forfeited unless within three months of the time of deposit, or such further period as the Commissioner may allow, the person making the deposit shall produce the required documents or declarations to the Commissioner.

12/1985
Sch.

(3) In this section a reference to “any person concerned” or “other person concerned” includes a reference to—

3/2001
S. 10 (b).

- (a) an insurance company which has issued a policy of insurance covering the goods in question; and
- (b) any person referred to in section 17G (3) of the Revenue Administration Act.

Copies of
documents
to be sub-
mitted.

224. Where any person is required to submit any report, entry, declaration, or other form for the purpose of the customs laws, the Commissioner may require such person to submit as many copies thereof as he may deem necessary; and where the Commissioner shall require invoices or certificates of origin, or both to be produced for any goods imported or exported, he may require such invoices or certificates of origin, or both, to be submitted in duplicate and may retain the duplicates, or, if such invoices or certificates of origin, or both, are not submitted in duplicate, he may retain the originals.

12/1985
Sch.

Translation.

225. Where any document required for the purposes of the customs laws contains any words not in the English

language, the person required to produce such document shall produce therewith a correct translation thereof in English.

226. Any officer may on the entry of any goods, or at any time afterwards, take samples of such goods for such purpose as the Commissioner may deem necessary, and such samples shall be disposed of and accounted for in such manner as the Commissioner may direct.

Samples.

12/1985
Sch.

227. The unloading, loading and removal of goods and bringing them to the proper place for examination and weighing, putting them into scales, opening, unpacking, repacking, bulking, sorting, lotting, marking and numbering, where such operations respectively are necessary or permitted, and removing to and placing them in the proper place of deposit until delivered or put on board an exporting aircraft or ship, shall be performed by or at the expense of the owner of such goods; and the owner shall unpack, sort, pile or otherwise prepare any goods either before or after entry thereof in such manner as the proper officer shall require to enable him to examine or take account of the same.

Goods to be
handled by
owner.

228. The Commissioner may direct what goods may be skipped in a Customs area or warehouse, or bulked, sorted, lotted, packed and repacked there, and the manner thereof, and direct in what manner and subject to what conditions the owner of any goods may take samples thereof; provided that no goods may in any such building or place be repacked into packages of a size in which the same are prohibited to be imported or exported, unless express provision therefor is made by law.

Samples for
owner.
12/1985
Sch.

229. If any goods shall be lost or destroyed by unavoidable accident before the same have been delivered out of the care of any officer, either on board an aircraft or ship, or in removing, loading, unloading, or receiving into a

Remission
of duty on
goods lost,
&c.

12/1985
Sch.

Customs area or warehouse, or in the Customs area or warehouse, or in course of delivery therefrom, the Commissioner, if satisfied that such goods have not been and will not be consumed in the Island, may remit or return the duties due or paid thereon, and any goods which may be abandoned by the owner thereof as not worth the duty while in the charge of any officer may be destroyed or otherwise disposed of as the Commissioner shall direct, at the cost and charges of such owner, and the Commissioner may thereupon remit or return the duties due or paid thereon.

Drawbacks
on goods
lost.
12/1985
Sch.

230. Where it is proved to the satisfaction of the Commissioner that any goods after being duly put on board an aircraft or ship for exportation or use as stores have, either before or after exportation, been destroyed by accident on board such aircraft or ship, any drawback or allowance payable on the goods shall be payable in the same manner as if the goods had been actually exported or used as stores.

Drawback
on goods
abandoned.

12/1985
Sch.

231. Where it is proved to the satisfaction of the Commissioner that any goods after being duly put on board an aircraft or ship for exportation or use as stores have been materially damaged on board such aircraft or ship, any drawback or allowance payable in respect of the goods shall, if they are with the consent of the Commissioner discharged in the Island and abandoned to the Government, be payable as if the goods had been actually exported or used as stores.

Modification
of declara-
tion.
12/1985
Sch.

232. The Commissioner may modify the form of declaration required under section 47 in such manner as he may think necessary for adapting it to the provisions of sections 230 and 231.

Authority to
be produced
by person
acting for
another.

233.—(1) Whenever any person shall make application to any officer to transact any business on behalf of any other person, such officer may require the person so applying to

produce a written authority from the person on whose behalf such application is made, and in default of the production of such authority may refuse to transact such business; and any document required by the customs laws to be signed by any particular person, if signed by any person authorized as aforesaid on behalf of the person required to sign the same, shall be deemed for all purposes to be signed by the person required to sign the same, provided that the Commissioner may in his discretion refuse to allow any such application as aforesaid.

12/1985
Sch.

(2) It shall be lawful for the Minister to prescribe regulations for the licensing of persons to transact business with the Customs on behalf of others for remuneration.

234. Where any document or declaration is required by the customs laws to be signed in the presence of the Commissioner, or any particular officer, if such document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Commissioner or the officer who receives the same, then in such case such document or declaration shall be as valid as if it had been signed in the presence of the Commissioner or the officer in whose presence it is required to be signed.

Witnessing
of signa-
tures.
12/1985
Sch.

235. Where under the customs laws the Master or agent of any aircraft or ship is required to answer questions put to him by the Commissioner or any officer, and such aircraft or ship shall be within the Island or the waters thereof and shall not have left her final position, anchorage or berth preparatory to leaving the Island it shall be lawful for the Commissioner or such officer to require the Master to attend before him at the office of the Commissioner or such officer, and in such case the requirements of the customs laws shall not be deemed to have been fulfilled unless the Master shall so attend when so required; provided that it shall be lawful for the Master, with the

Master to
attend
before
Commis-
sioner if
so required.
12/1985
Sch.

12/1985
Sch.

consent of the Commissioner or such officer, to depute a senior officer of such aircraft or ship to attend for the purpose of answering such questions, and in such case, any reply made to any question put to such senior officer by the Commissioner or such officer as aforesaid shall for the purposes of section 209 be deemed to have been made by the person required to answer such questions.

Time of
importation,
&c., defined.

236.—(1) If for any purpose of the customs laws it becomes necessary to determine the precise time at which an importation of any goods shall be deemed to have had effect, such time shall be deemed to be the time at which the aircraft or ship importing such goods actually landed in the Island or came within the waters thereof.

(2) If any question arises upon the arrival of any aircraft or ship at any port or place in the Island in respect of any charge or allowance for such aircraft or ship, exclusive of cargo, the time of such arrival shall be deemed to be the time at which such aircraft or ship shall first be boarded by any person other than the pilot in the employment of the Government at such port or place.

(3) The time of exportation of any goods shall be deemed to be the time when the same are put on board the exporting aircraft or ship, except in the case of goods prohibited to be exported, with reference to which the time of exportation shall be deemed to be the actual time at which the aircraft or ship departed from her final position, anchorage or berth within the Island or the waters thereof.

Special
packages
deemed
goods.
12/1985
Sch.

237. All packages and coverings in which goods are imported or exported and which in the opinion of the Commissioner—

- (a) are not the usual or proper packages or coverings for such goods; or

(b) are designed for separate use, other than as packages or coverings for the same or similar goods, subsequent to importation or exportation, as the case may be,

shall for all purposes of the customs laws be deemed to be separate articles, except in cases where a contrary provision shall be made.

238. In addition to any other power of arrest or detention conferred by the customs laws, any officer may arrest and detain any person whom he finds committing an offence against the customs laws, and take him before a Justice to be dealt with according to law.

Power of arrest.

239. If any person liable to arrest under the customs laws escapes from any officer attempting to arrest him, or if any officer is for any reason whatever unable or fails to arrest any such person, such person may afterwards be arrested and detained by any officer at any place in the Island within seven years from the time such offence was committed, and dealt with as aforesaid, as if he had been arrested at the time of committing such offence.

Arrest after escape.

PART X. *Legal Proceedings*

240.—(1) Subject to the express provisions of the customs laws, any offences under the customs laws may be prosecuted, and any penalty or forfeiture imposed by the customs laws may be sued for, prosecuted and recovered summarily, and all rents, charges, expenses and duties, and all other sums of money whatsoever payable under the customs laws may be recovered and enforced in a summary manner on the complaint of any officer.

Prosecutions for customs offences.
25/1978
S. 2(a).

(2) Where a court is satisfied that a person accused of an offence under the customs laws has absconded or, after due enquiry, cannot be found in Jamaica, the court if satisfied, after such investigation as it thinks fit, that any goods connected with the alleged offence were imported into the Island, or knowingly acquired, in contravention of the customs laws, may direct the forfeiture or disposal of such goods as

25/1978
S. 2(b).

could have been forfeited or disposed of under this Act if that person had been found guilty of the offence of which he is accused.

Proceedings
to be taken
within seven
years.

241. Proceedings under the customs laws may be commenced at any time within seven years after the date of the offence.

Alternative
sentence.

242. Where any court has imposed a penalty for any offence against the customs laws, and such penalty is not paid, the court may, notwithstanding anything contained in any other enactment, order the defendant who is convicted of such offence, in default of payment of the penalty adjudged to be paid, to be imprisoned, with or without hard labour, for any term not exceeding one year, where the penalty does not exceed one hundred thousand dollars, or five years where the penalty exceeds one hundred thousand dollars.

12/1985
Sch.
35/1997
S. 2.

Imprison-
ment for
second
offence.
35/1997
S. 2.

243. Where a penalty of fifty thousand dollars or upwards has been incurred under the customs laws, and the defendant has previously been convicted for an offence against the customs laws, or has previously incurred a pecuniary penalty or forfeiture under the customs laws which has been enforced in any court, the court may, if it thinks fit, in lieu of ordering payment of a pecuniary penalty, order the defendant to be imprisoned, with or without hard labour, for any period not exceeding five years.

14/2004
Sch.

Limitation
as to pleading.

244. The fact that any duties of customs have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any proceeding under the customs laws.

Place of
offence.

245. Every offence under the customs laws shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which it actually was committed or arose, or in any place on land where the offender or person prosecuted may be or be brought.

Officer may
prosecute.

246. Any officer may prosecute and conduct any information or other proceeding under the customs laws in respect of any offence or penalty.

247. In all proceedings under the customs laws the same rules as to costs shall be observed as in proceedings between private persons. Costs.

248.—(1) No claim or appearance shall be entered to any information filed or exhibited for the forfeiture of any animal, carriage, aircraft, ship or goods seized for any cause of forfeiture in any court unless such claim or appearance be made by or in the real name of the owner thereof, describing his place of residence and occupation; and if such claimant shall reside in the Island, oath shall be made by him before the court before which such information shall be exhibited, that the said animal, carriage, aircraft, ship or goods were his property at the time of seizure; but if such person shall reside outside of the Island, then oath shall be made by the attorney by whom such claim or appearance shall be entered that he has full authority from such claimant to make or enter the same, and that to the best of his knowledge and belief the same were at the time of seizure, the *bona fide* property of the claimant; and on failure of making such proof of ownership such animal, carriage, aircraft, ship or goods shall be condemned, as if no claim or appearance had been made; and if such animal, carriage, aircraft, ship or goods shall at the time of the seizure thereof be the *bona fide* property of any number of owners exceeding five, it shall not be necessary for more than two of them to enter such claim or appearance on the part of themselves and their co-owners, or to make such oath as aforesaid; and if any such animal, carriage, aircraft, ship or goods shall at the time of seizure be the property of a company, such claim and appearance may be entered and oath made by the secretary or a director of such company. Claims to seized goods to be in name of owner.

(2) For the purpose of this section a company means a limited company registered in the Island under the provisions of the Companies Act, but does not include any company or association of persons calling themselves a company not so registered.

Certificate
of probable
cause of
seizure.

249. In case any information or suit shall be commenced or brought to trial on account of the seizure of any animal, carriage, aircraft, ship or goods, or pursuant to any act done by any officer in the execution or intended execution of his duty under the customs laws, and such information or suit be dismissed, and it shall appear to the court before whom the same shall have been tried that there was probable cause for such seizure or act the court shall certify on the record that there was such probable cause, and in such case the person who made such seizure or performed such act shall not be liable to any action, indictment or other suit or prosecution on account of such seizure or act; and a copy of such certificate, verified by the signature of the officer of the court, shall at the request of the officer concerned be given to him, and the same shall for all purposes be sufficient evidence of such certificate; and in case any action, indictment or other suit or prosecution shall be commenced and brought to trial against any person on account of any seizure or act as aforesaid (whether any information be brought to trial in respect of the same or not, or, having been brought to trial, the court shall not have certified that there was a probable cause for such seizure or act), wherein a verdict shall be given against the defendant, if the court shall be satisfied that there was probable cause for such seizure or act, then the plaintiff shall recover any things seized or the value thereof without costs of suit, but no conviction shall be recorded against the defendant.

PART XI. *Proofs in Proceedings*

Onus of
proof on
defendant in
certain
cases.

250.—(1) In any prosecution under the customs laws, the proof that the proper duties have been paid in respect of any goods, or that the same have been lawfully imported or exported, or lawfully put into or out of any aircraft or ship, or lawfully transferred from one aircraft or ship to another aircraft or ship shall lie on the defendant.

12/1985
Sch.

(2) The averment that the Commissioner has elected that any particular penalty should be sued for or recovered, or that any goods thrown overboard, staved or destroyed were thrown overboard, staved or destroyed to prevent seizure, or that any person is an officer, or that any person was employed for the

prevention of smuggling, or that the offence was committed, or that any act was done within the limits of any port, or in the waters of the Island, or over the Island, or where the offence is committed in any port or place in the Island, the naming of such port or place in any information or proceedings, shall be deemed sufficient, unless the defendant in any such case shall prove the contrary.

251. If upon any trial a question shall arise whether any person is an officer, his own evidence thereof shall be deemed sufficient, and every such officer shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty, notwithstanding such officer may be entitled to any reward upon the conviction of the party charged in such suit or information.

Evidence of officers.

252.—(1) In all cases where any penalty the amount of which is to be determined by the value of any goods is sued for under the customs laws, such values shall, as regards proceedings in any court, be estimated and taken according to the price for which goods that are of the same class or kind as the goods in respect of which the penalty is being sued for were sold in the Island in the open market at or about the time of the commission of the offence giving rise to those proceedings.

Valuation of goods for penalty.

3/2001 S. 11.

(2) A certificate under the hand of the Commissioner of the value of such goods and the import duties payable on such goods shall be accepted by the Court as *prima facie* evidence of the value thereof and of the duties payable thereon.

35/1997 S. 2.

253. In case any book or document required by the customs laws be required to be used as evidence in any court as to the transactions to which it refers, copies thereof certified by an officer shall be admissible for that purpose without production of the original; and certificates and copies of official documents purporting to be certified under the hand and seal or stamp of office of any of the principal officers of Customs and Excise in the United Kingdom, or of any Comptroller of revenue in any Commonwealth country, or of any Jamaican or British Consul or Vice-Consul in a foreign country shall be received as *prima facie* evidence.

Copies of documents valid.

Admissibility
of certain
documents.
16/2009
S.2.

253A.—(1) Subsection (2) applies where the prosecution establishes, to the satisfaction of the Court, that—

- (a) facts are contained in any book, document, computer equipment or electronic recording device found in the possession of a defendant or on any premises owned or occupied by the defendant;
- (b) the owner of the book, maker of the document or a person who entered the information in the book, document, computer equipment or electronic recording device is unable or unwilling to appear before the Court in order to prove the contents thereof; and
- (c) the facts are within the knowledge of the defendant or were within his means to know.

(2) Notwithstanding any provision of law to the contrary, the evidential burden shall lie on the defendant to disprove any fact to which subsection (1) relates in any case in which direct oral evidence would have been admissible.

Proof of
order of
Govern-
ment.

254. If upon the trial of any issue touching any seizure, penalty or forfeiture, or other proceedings under the customs laws or incident thereto, it may be necessary to give proof of any order issued by the Government, or any person in the employment of the Government, the order, or any letter or instructions referring thereto, shall be admitted and taken as sufficient evidence of such order, if any such document purports to be signed by any such functionary, or shall appear to have been officially printed or issued unless the contrary be proved.

Certificate of
condem-
nation.

255. Condemnation by any court under the customs laws may be proved in any court, or before any competent tribunal, by the production of a certificate of such condemnation purporting to be signed by the officer of such court.

PART XII. *Miscellaneous and Repeal*

Effect of Air
Navigation
Orders-in-
Council.

256. Where in any Order-in-Council made applicable to the Island in accordance with the provisions of the United Kingdom Air Navigation Acts, 1920 and 1936, or any amending Act, or in any regulations made under any such Order-in-Council, any provision shall be made contrary to the customs laws, such provision shall have effect to the exclusion of the corresponding provision contained in the said laws.

257. The Minister may make regulations for the better carrying out of the provisions of the customs laws and for the prevention of frauds on the revenue and may in such regulations prescribe fees, rents or charges to be paid in respect of any matter therein referred to; and all such regulations shall be published in the *Gazette*.

Regulations.
4/1991
S. 3.

257A. The Minister may, by order subject to affirmative resolution of the Houses of Representatives, amend or vary any penalty or fine under this Act.

Minister may
amend
penalties, etc.,
by order.
14/2004
Sch.

258. Subject to the provisions of this Act and any regulations made thereunder, the Commissioner may from time to time prescribe forms required to be used for the purposes of the customs laws and any such forms so prescribed, shall be published in the *Gazette* one month before such forms shall be required to be used.

Forms.
12/1985
Sch.

259. The Commissioner may permit the entry, unloading, removal and loading of goods, and the report and clearance of aircraft and ships in such form and manner as he may direct to meet the exigencies of any case to which the customs laws may not be conveniently applicable.

Discretionary power
to Commissioner in
special
circumstances.
12/1985
Sch.

260. With respect to the laws now repealed the following provisions shall apply—

Provisions
relating to
repeals.

- (a) all offices, appointments, proclamations, rules, regulations, by-laws, orders, warrants, seals, certificates, books, records, instruments, documents, proceedings, and generally all acts of authority which originated under any of the said laws or any law thereby repealed and are subsisting or in force on the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated;
- (b) where under any repealed law any act, matter or thing is authorized to be done such act, matter or thing may be done under this Act unless the same is inconsistent with the express provisions of this Act;

- (c) where in any enactment, or in any proclamation, rule, regulation, by-law, order, form or document whatsoever made under any enactment now repealed, reference is made to any former Customs Consolidation Law, or to the Customs Consolidation Law, 1877 (Law 18 of 1877) or any enactment amending that Law, or any customs law such reference shall be read and shall operate as if it had been made to this Act or the provisions of this Act corresponding thereto.

3/2001
S. 12.
Interpreta-
tion.

SCHEDULE

(Section 19)

1.—(1) In this Schedule—

“customs value of imported goods” means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

“goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods;

“identical goods” means, subject to sub-paragraph (2), goods that the proper officer is satisfied—

- (a) are produced in the same country at or about the same time as the goods being valued; and
- (b) are the same in all respects as the goods being valued, notwithstanding minor differences in appearance;

“members of the same family”, as respects any person, means—

(a) the person’s—

- (i) husband or wife;
- (ii) child, adopted child, step-child, grand-child or any other child wholly or mainly maintained by that person;
- (iii) brother or sister;
- (iv) uncle or aunt;
- (v) nephew or niece;
- (vi) mother, father or adoptive parents;
- (vii) stepmother or stepfather; and
- (viii) lineal ancestor or descendant; and

(b) any person who is related by marriage to a person referred to in paragraph (a);

“produced” includes grown, manufactured and mined;

“seller” means a person who has the legal or beneficial interest in the goods at the time that the contract of sale is concluded and to whom the proceeds of sale will ultimately be paid, exclusive of any commission or fee;

“similar goods” means, subject to sub-paragraph (3), goods that the proper officer is satisfied—

- (a) are produced at or about the same time in the same country as the goods being valued; and
- (b) although not alike in all respects to the goods being valued, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

(2) References in sub-paragraph (1) to “identical goods” and “similar goods” respectively, do not include references to goods which incorporate or reflect engineering, development, artwork, design work and plans and sketches for which no adjustment has been made under paragraph 8 (1) (b) (iv) on the ground that such engineering, development, artwork, design work and plans and sketches were undertaken in the Island.

(3) In determining whether or not goods are similar, the quality of the goods, their reputation and any registered trade mark in respect of those goods or a class of goods to which they belong are among the factors that may be taken into account.

(4) For the purpose of this Schedule—

- (a) a buyer and a seller of imported goods shall be deemed to be related only if—
 - (i) they are officers or directors of one another’s business;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the voting shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;

- (vii) together they control, directly or indirectly, a third person; or
 - (viii) they are members of the same family;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;
 - (c) persons who are associated with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria specified in sub-paragraph (a);
 - (d) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five days immediately preceding or immediately following the day on which the other event occurs.

2.—(1) Where the conditions specified in paragraph 3 are fulfilled, the customs value of imported goods shall be determined under that paragraph.

Customs value, sequential application and the fallback method.

(2) A declaration of customs value of imported goods shall be made by the importer and shall be supported by documentary evidence consisting of objective and quantifiable data that establishes the accuracy of that declaration.

(3) Subject to sub-paragraph (4), where the customs value of imported goods cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, to the first such paragraph under which the customs value can be determined; but the order of application of paragraph 6 and 7 shall be reversed if the importer so requests and the Commissioner agrees.

(4) Except as provided in sub-paragraph (3), the provisions of the next paragraph in the sequence established by that sub-paragraph shall be applied only where the customs value of imported goods cannot be determined under a particular paragraph.

(5) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, then, it shall—

- (a) be determined using such means as are reasonable having regard to the principles and general provisions of this Schedule; and
- (b) be based, as far as practicable, on previously determined customs values.

(6) No customs value of imported goods shall be determined under sub-paragraph (5) on the basis of—

- (a) the selling price in the Island of goods produced therein;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with paragraph 7;
- (e) the price of the goods for export to a country other than Jamaica;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3.—(1) Subject to paragraphs 2 and 8, the customs value of imported goods determined under this paragraph shall be the transaction value, that is to say, the price actually paid or payable for the goods when sold for export to the Island, in the circumstances referred to in sub-paragraph (2) and adjusted in accordance with paragraph 8 or, where appropriate, paragraph 9.

Transaction value.

(2) The circumstances referred to in sub-paragraph (1) are that—

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—
 - (i) are imposed or required under any law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
- (d) the buyer and the seller are not related or, where they are related, the transaction value is acceptable for customs purposes under sub-paragraph (3).

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(3) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), in circumstances where the buyer and seller are related, the Commissioner shall—

- (a) take account of the circumstances of the sale; and
- (b) accept the transaction value stated, unless, on the basis of information provided by the importer or otherwise, he considers that there are grounds for believing that the relationship influenced the price.

(4) The Commissioner shall inform the importer in writing of the grounds referred to in sub-paragraph (3) and give him a reasonable opportunity to be heard.

(5) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) if, subject to sub-paragraph (6), the importer demonstrates that such value closely approximates to one of the following values occurring at or about the same time—

- (a) the transaction value in sales of identical or similar goods for export to the Island between buyers and sellers who are not related in any particular case;
- (b) the customs value of identical or similar goods, as determined under paragraph 6;
- **(c)* the customs value of identical or similar goods, as determined under paragraph 7.

(6) In applying any of the provisions of sub-paragraph (5) account shall be taken of—

- (a) demonstrated differences in commercial levels and quantity levels;
- (b) the matters specified in paragraph 8; and
- (c) costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

**(7)* For the purpose of sub-paragraph (1), the price actually paid or payable is, subject to sub-paragraphs (8) and (9), the total payment made, or to be made, for the imported goods by the buyer to, or for the benefit of, the seller.

(8) The payment referred to in sub-paragraph (7) may be made either directly or indirectly without necessarily taking the form of a transfer of money and shall include—

*Determination of value suspended w.e.f. 3.6.2002 to 10.3.2004 – L.N. 28/2002 refers.

- (a) all payment that, as a condition of sale of the imported goods, are made or to be made by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
- (b) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

(9) Except to the extent allowed under paragraph 8—

- (a) any activities (including the marketing of imported goods) undertaken by a buyer on his own account shall not be regarded for the purpose of this paragraph as an indirect payment to the seller, whether or not such activities are of benefit to the seller or were undertaken by the buyer pursuant to an agreement with the seller; and
- (b) the cost of any such activity shall not be added to the price actually paid or payable in determining the customs value of the imported goods.

(10) The following charges or costs shall not be taken into account in determining the customs value of imported goods if such charges or costs may be distinguish from the price actually paid or payable for those goods—

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of goods such as industrial plant, machinery or equipment;
- (b) the cost of transportation after importation;
- (c) customs duties and other taxes payable in the Island by reason of the importation or sale of the goods.

4.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to the Island at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, identical goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the differences attributable to commercial level or quantity, or to both.

Determina-
tion of
customs
value on
basis of
transaction
value of
identical
goods sold
for export.

(3) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of identical goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of identical imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

Determina-
tion of
customs
value on
basis of
transaction
value of
similar
goods
sold for
export.

5.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to the Island and exported at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, similar goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the difference attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of similar goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph "the transaction value of similar imported goods" means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

6.—(1) Subject to paragraph 2, where the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they are imported, the customs value of those goods shall be determined in accordance with sub-paragraph (2).

Value based on unit price of greatest aggregate quantity: (the deductive method).

(2) The customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, to persons who are not related to the seller at or about the time of the importation of the goods being valued, subject to deductions for the following—

- (a) subject to sub-paragraph (10), the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Island of imported goods of the same class or kind;
- (b) the usual costs of transportation and insurance and other associated costs normally incurred within the Island; and
- (c) the customs duties and other duties or taxes payable in the Island by reason of the importation or sale of the goods.

(3) If neither the imported goods nor identical or similar imported goods are sold at or about the time of importation of the goods being valued, then, if the importer so requests, the customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they were imported and at the earliest date after their importation, being a date not later than ninety days after the date of such importation, subject to the deductions specified in sub-paragraph (1).

(4) Subject to sub-paragraph (5), if neither the imported goods nor identical or similar imported goods are sold in the Island in the condition in which they were imported, then the Commissioner may determine that the value of the goods shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Island who are not related to the seller.

(5) In determining value under sub-paragraph (4), deductions shall be made in respect of—

- (a) the value added by such further processing, based on quantifiable data and calculated on the bases of usual formulae and methods and practices of the industry concerned; and
- (b) the matters specified in sub-paragraph (2) (a), (b) and (c).

(6) Subject to sub-paragraph (7), the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units of the goods is sold in sales made to persons who are not related to the seller, being sales occurring at the first commercial level after the importation at which the sales take place.

(7) In determining the unit price for the purposes of this paragraph, no account shall be taken of any sale in the Island to a person who supplies any goods or services specified in paragraph 8 (1) (b), directly or indirectly, free of charge or at a reduced cost, for use in connection with the production and sale for export of the imported goods.

(8) Subject to sub-paragraph (9), the amount allowable under sub-paragraph (2) (a) as a deduction for profit and general expenses shall be taken as a whole and shall be determined on the basis of figures and other information supplied by or on behalf of the importer.

(9) Where it appears to the proper officer that the figures or other information so supplied are not consistent with verifiable figures and information pertaining to sales of imported goods of the same class or kind, the proper officer may determine the amount allowable on the basis of figures and information other than those supplied.

(10) In determining for the purposes of sub-paragraph (2) (a) the commissions or the additions usually made for profit and general expenses, the question whether imported goods are of the same class or kind shall be decided on the facts of each particular case, having regard to all the circumstances, and taking into account, where possible, information pertaining to the sale of the narrowest group or range of imported goods of the same class or kind.

(11) A reference to goods of the same class or kind includes a reference to goods imported from the same country as the goods being valued and to goods imported from other countries.

(12) For the purposes of sub-paragraph (3), “the earliest date” means the date by which sales of the goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

7.—(1) Subject to paragraph 2 and this paragraph, the customs value of imported goods shall be determined under this paragraph on a computed value consisting of the sum of—

Determina-
tion of
value based
on com-
puted
value.

- (a) the cost or value of the materials and processing used to produce the imported goods;
- (b) an amount for profit and general expenses equivalent to the amount usually reflected in sales of goods that are of the same class or kind as the goods being valued and that are made by producers in the country of exportation for export to the Island; and
- (c) the total of all costs and charges referred to in paragraph 8 (1) (e).

(2) The cost referred to in sub-paragraph (1) (a) shall include—

- (a) the costs referred to in paragraph 8 (1) (a) (ii) and (iii);
- (b) the value, duly apportioned, of such goods or services referred to in paragraph 8 (1) (b) as have been supplied, directly or indirectly, by the buyer for use in connection with the production of the imported goods;
- (c) the value of such goods and services referred to in paragraph 8 (1) (b) (iv) as are undertaken in the Island, to the extent only that they are charged to the producer,

and no cost or value as aforesaid shall be counted more than once in determining the computed value of imported goods.

(3) The cost or value referred to in sub-paragraph (1) (a) shall be determined on the basis of such commercial accounts supplied by or on behalf of the producer as relate to the production of the goods being valued and as are consistent with the generally accepted accounting principles applied in the country in which the goods are produced.

(4) For the purposes of sub-paragraph (1) (b)—

- (a) the amount for profit and general expenses shall, subject to sub-paragraph (b), be taken as a whole and shall be determined on the basis of figures or other information supplied by or on behalf of the producer;
- (b) where it appears to the proper officer that the figures or other information so supplied are not consistent with the figures or other information usually attributable to sales of goods that—
 - (i) are of the same class or kind as the goods being valued; and
 - (ii) are made by producers in the country of exportation for export to the Island.
 the proper officer may determine the amount for profit and general expenses on the basis of figures and information other than those supplied by or on behalf of the producer of the goods;
- (c) the question whether goods are of the same class or kind as other goods shall be decided on the facts of each particular case, having regard to all the circumstances and taking into account, where possible, information pertaining to the sales for export to the Island of the narrowest group or range of goods of the same class or kind as the goods being valued;
- (d) a reference to—
 - (i) “general expenses” is a reference to the direct and indirect costs of producing and selling the goods for export, being costs not included under sub-paragraph (1) (a); and
 - (ii) “goods of the same class or kind” means goods imported from the same country as the goods being valued.

8.—(1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods—

- (a) the following costs, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods—
 - (i) commission and brokerage, except buying commission;
 - (ii) the costs of containers which, for customs purposes, are treated as one with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;

Certain charges to be included in customs value.

- (b) the value, apportioned as appropriate, of the following goods and services where they are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable that is to say—
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork and design work, as well as such plans or sketches as are done outside of the Island and are necessary for the production of the imported goods;
 - (c) royalties and licence fees, including payments in respect of patents, trademarks and copyright, related to the goods being valued payable by the buyer, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
 - (e) subject to any reduction of freight charges by the Commissioner in accordance with section 19 (7), the following costs and charges—
 - (i) the cost of transportation of the imported goods to the port or place of importation;
 - (ii) the loading, unloading and handling charges associated with the transportation of the imported goods to the port or place of importation; and
 - (iii) the cost of insurance.
- (2) In determining the customs value of imported goods—
- (a) no additions shall be made to the price actually paid or payable for those goods, except as provided in this paragraph; and

- (b) additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data; and
 - (c) the transaction value of the goods shall not be determined under paragraph 3 in the absence of such data.
- (3) Notwithstanding sub-paragraph (1) (c)—
- (a) in determining the customs value of imported goods, charges for the right to reproduce the goods in the Island shall not be added to the price actually paid or payable for those goods;
 - (b) payments made by the buyer for the right to distribute or resell those goods shall not be added to the price actually paid or payable for the goods if such payments are not a condition of the sale for export of those goods to the Island.

(4) In this paragraph—

“buying commission” means fees paid by an importer to his buying agent for the service of representing him abroad in the purchase of the goods being valued.

“buying agent” means a person who acts for a buyer of goods for reward or hire.

Interest
charges
to be
excluded.

9.—(1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3, if the requirements in sub-paragraph (2) are satisfied.

(2) The requirements referred to in sub-paragraph (1) are as follows—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement is in writing;
- (c) where required by the Commissioner, the buyer can demonstrate that—
 - (i) such goods are actually sold at the price declared as the price actually paid or payable; and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(3) The provisions of sub-paragraphs (1) and (2) shall apply—

- (a) whether the finance is provided by the seller, a bank or another person; and
- (b) with such modifications as may be necessary in relation to any case where value is determined under a method other than the transaction value.

See
for data
processing
equipment.

10.—(1) Where the value of the data or instructions recorded on any carrier medium for data processing equipment is distinguished or distinguishable from the cost or value of the medium itself, then, in determining the transaction value of the carrier medium, no account shall be taken of the value of the recorded data or instructions.

(2) For the purposes of this paragraph—

- “carrier medium” shall not include integrated circuits, semi-conductors and similar devices or articles incorporating such circuits or devices;
- “data or instructions” shall not include sound, cinematic or video recordings.