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THE CUSTOMS LAW (17 OF 1990)

(1998 Revision)

Consolidated with Law 35 of 1993 and 4 of 1997 (part).

Revised under the authority of the Law Revision Law (19 of 1975).

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Consolidated and revised this 6th day of January, 1998.

Note (not forming part of the Law): This revision replaces the 1997 Revision which should now be discarded.

CUSTOMS LAW

(1998 Revision)

ARRANGEMENT OF SECTIONS

PART I -Introductory

1. Short title
2. Definitions
3. Establishment of Customs Department
4. Appointment of Collector

PART II - Customs Officers, their Duties and Powers

5. Duties of Collector
6. Officers
7. Powers of Collector
8. Duties of officers
9. Powers of officers

PART III- Control of Vessels and Goods

10. Prohibited and restricted goods
11. Inward bound vessels to proceed direct to a port
12. Master or commander to make report
13. Place for discharge of cargo and disembarkation of passengers
14. Entry of goods
15. Examination of goods
16. Samples
17. Movement of uncustomed goods
18. Release of goods from port or airport of arrival
19. Temporary imports
20. Approval of bonded warehouses
21. Customs regulations
22. Deposit of goods in bonded warehouse, etc.
23. Delivery from bonded warehouse
24. Bonded warehouse deficiencies
25. Revocation of approval of bonded warehouse
26. Transit and transshipment
27. Queen's Warehouse

28. Disposal of goods held in Queen's Warehouse
29. Mode of sale of goods in Queen's Warehouse and disposal of proceeds of sale
30. Duties of master of outgoing vessel
31. Entry of goods outwards
32. Clearance of coasting ship and transire
33. Times of import and export
34. Surplus stores
35. Accidental loss of goods under Customs control
36. Liability for fire and accident
37. Agents

PART IV - Incidence and Collection of Duty and Package Tax

38. Charge of duty
39. Liability for duty
40. Basis of valuation
41. Calculation of value
42. Re-imported goods
43. Relief from duty
44. Drawback
45. Refund of duty where goods are returned or destroyed
46. Concession to armed forces of the Crown
47. Package tax
48. Governor may waive or order refund

PART V - Contraventions and Consequences thereof

49. Offences by officers
50. Offences against officers
51. Smuggling
52. Engagement in smuggling
53. Presumption of being engaged in smuggling
54. Evading duty
55. Possession, etc., of goods on which duty has not been paid
56. Offering goods for sale under colour of having been smuggled, etc.
57. Procedural offences
58. Miscellaneous offences
59. Forfeiture
60. Mandatory penalty
61. Penalties
62. Customs may sue and be sued

63. Officers may represent Customs in summary courts
64. Notice of seizure
65. Vicarious liability
66. Joint responsibility
67. Recovery of penalties
68. Appeals
69. Rewards
70. Special powers of Governor in Council

PART VI - Miscellaneous

71. Expenses of implementing Customs requirements
72. Bonds and security
73. Regulations
74. Provisional collection of customs duties

CUSTOMS LAW

(1998 Revision)

PART I -Introductory

1. This Law may be cited as the Customs Law (1998 Revision).

Short title

2. In this Law-

Definitions

“A.T.A. Carnet” means a document issued by an internationally approved Chamber of Commerce covering the temporary import of goods and giving security for the re-export of the same in unchanged condition within the period therein prescribed;

“*ad valorem*” has the meaning ascribed to it in section 40;

“airport” means the Owen Roberts Airport, the Gerrard Smith Airport or any other area of land or water or of land and water designed, equipped, set apart and commonly used for affording facilities for the landing and departure of aircraft and designated as such under the Civil Aviation Authority Law (1997 Revision);

1997 Revision

“apron” means that part of a port or airport prescribed by the Customs Regulations for the loading and unloading of goods and the embarkation or disembarkation of passengers;

“assigned matter” means any matter in relation to which the Collector of Customs is for the time being required in pursuance of any enactment to perform any duties;

“boarding station” means any location, in or on water or land within the jurisdiction, appointed by the Collector under section 11(2), to which vessels may be directed for the purpose of Customs control;

“bonded warehouse” means any prescribed building, place or portion of such building or place where uncustomed goods, in respect of which entry has been made, may lawfully be stored for such period and under such conditions as may be prescribed without payment of duty during such storage;

“coasting ship” means a vessel for the time being engaged in, preparing for or completing a coastwise voyage;

“coastwise” means appertaining to a journey by sea or air from a place within the jurisdiction to another such place;

“Collector” means the officer appointed by the Governor under section 4 to be in charge of the Customs and includes any officer acting for the Collector;

“commander”, in relation to an aircraft, includes any person having or taking the charge or command of an aircraft;

“container” means a receptacle designed for the packing of goods for transportation, and includes any bundle, package, cask or other receptacle;

“customed goods” means goods which have been submitted to and lawfully released from Customs charge;

“Customs” means the Department of Customs established under section 3 and includes any officer authorised to act on its behalf;

“Customs area” means any place prescribed as such;

“drawback” means duty repaid or repayable in respect of customed goods by reason of the re-export of the same or some other provision of this or any other law;

“dutiable goods” means goods of a class or description subject to any duty or tax, whether or not those goods are in fact charged with that duty or tax, and whether or not that duty or tax has been paid thereon;

“duty” means the amount or charge leviable on certain classes of goods imported into the Islands as defined and set forth in the Customs Tariff Law (1998 Revision);

“entry”, in respect of any goods, means a written declaration of the importation or exportation of such goods in such form as the Customs may require;

“export”, in relation to goods, means the despatch of such goods from a location within the jurisdiction to a place out of the jurisdiction;

“exporter” includes any person having responsibility for or taking part in the export of goods;

“gallon” means an imperial gallon;

“goods” include every moveable thing capable of being owned and includes stores, baggage and personal effects;

“home use”, with reference to imported goods, means goods which are intended for, or have gone into, consumption, use or retention in the Islands;

“import”, in relation to goods, means the bringing or arrival of such goods by any means whatsoever into the jurisdiction from any place outside the jurisdiction;

“importer” includes any owner or other person for the time being having a right to possession of or being beneficially interested in any imported goods with effect from the time of import of such goods until the same have been duly customed;

“in ballast”, in relation to a vessel, means a vessel carrying material or water to enhance stability, but otherwise carrying no goods other than stores and the baggage of passengers and crew aboard such vessel;

“jurisdiction” includes all waters contained within an imaginary line drawn parallel to the shores or outer reefs of the Islands, and distanced twelve nautical miles therefrom;

“landed account” has the meaning ascribed to it in section 15(5);

“master”, in relation to a ship, means the person having or taking command or charge of such ship;

“mile” means a nautical mile being a distance of six thousand and eighty feet;

“officer” means an officer appointed under section 6 and includes any police officer or other person assisting Customs in any assigned matter;

“owner”, in relation to any goods, includes any proprietor, importer, exporter, shipper or other person for the time being entitled, as agent or otherwise, to the possession of those goods, or being beneficially interested in those goods, whether or not such goods are subject to any lien;

“package” includes everything which contains, or is capable of containing, goods;

“package tax” means the tax on imported goods prescribed by section 47;

“port” means a prescribed area of land or water or both to which vessels on arrival from or departure to a foreign or coastwise location are required to

proceed immediately upon such arrival within the jurisdiction or immediately prior to such departure;

“port authority”, in relation to any port, means the person, corporate or otherwise, for the time being responsible for the management of such port and includes any person delegated by such authority to perform the duties of such management;

“prescribed” means prescribed by this Law or any regulations made hereunder;

“procedural offence” has the meaning ascribed to it in section 57;

“prohibited or restricted goods” means goods of a class or description of which the importation, exportation or carriage coastwise is for the time being prohibited or restricted under or by virtue of any enactment;

“proper”, in relation to the person by or whom, or the place at which, anything is to be done, means the person or place appointed or authorised in that behalf by the Collector;

“Queen’s Warehouse” means any building or locality prescribed as such by the Governor for the deposit of goods of any class for the security thereof and of the duties chargeable thereon;

“report” means the report required to be made under section 12;

“ship” includes any boat or floating craft whatever, and any submarine or hovercraft;

“stiffening order” means an order for strengthening the hull of a vessel prior to its taking aboard goods of an unusual kind by reason of the bulk, weight or nature of the same;

“stores” means goods for use in a ship or aircraft and includes fuel, spare parts and other articles of equipment, whether or not for immediate use, and consumable stores and other goods for use in or store on a vessel; any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein shall be treated for the purpose of the this Law as stores;

“transhipment” means the import and re-export of goods as cargo in another ship or aircraft, or in the same ship or aircraft on a different voyage, from the same Customs area as that into which the goods were imported;

“transire” means a written authority issued by Customs permitting the carriage of goods on a coastwise voyage;

“transit” means the re-export of goods in another ship or aircraft from a Customs area other than that into which the goods were imported;

“transit shed” means any building, place or portion of such building or place which the Collector may approve, subject to such conditions as he thinks fit, for the deposit of goods imported and not yet cleared out of Customs charge;

“uncustomed goods” means imported goods which have not been submitted to and legally released from Customs charge;

“vessel” includes a ship and an aircraft, and any other thing or device capable of being used for conveying goods or passengers from one place to another, and includes a vessel being carried or towed by another vessel whether as cargo or for any other purpose;

“voyage” includes flight; and

“warehouse keeper” means the person nominated by the Governor, when prescribing any building or place to be a bonded warehouse, as the person responsible for the conduct of the business of such warehouse.

3. There shall continue to be established a department of Government called the Customs Department which shall be maintained by such monies as may, from time to time, be voted by the Legislative Assembly.

Establishment of
Customs Department

4. The Governor shall appoint a suitable person who shall be called the Collector of Customs, to be the officer in control of Customs.

Appointment of
Collector

PART II - Customs Officers, their Duties and Powers

5. In addition to the duties conferred upon him by or under any other law, the Collector is responsible for -

Duties of Collector

- (a) the management, supervision and control of the Customs;
- (b) the administration and implementation of this Law;
- (c) the collection of Customs revenue and accounting for the same; and

- (d) the care of public and other property under Customs control, but without having to account for loss thereof unless such loss is due to his personal default.

Officers

6. (1) The Governor may, in his discretion, appoint such persons to be officers of Customs upon special contractual terms or such general terms as he may, by regulations, determine.

(2) Every police constable shall assist in the enforcement of the law relating to any assigned matter and, for this purpose, every constable shall be *ex-officio* an officer of Customs.

Powers of Collector

7. In addition to the powers incidental to his duties under section 5 and such powers as are conferred upon officers under section 8, the Collector may-

- (a) extend the period of temporary importation under section 19;
- (b) remit or reduce any prescribed fine for a procedural offence;
- (c) on payment of prescribed fees or charges, permit-
 - (i) customs work to proceed during other than prescribed hours; and
 - (ii) examinations under of section 15(2) to be conducted at a place other than an apron or transit shed;
- (d) permit the landing of goods in advance of the report as required by section 12;
- (e) in any port or airport, approve for such periods and subject to such conditions and restrictions as he thinks fit, transit sheds for the deposit of goods imported at that port or airport and not yet cleared from Customs, including any goods not yet reported and entered under this Law; and any reference in this Law to a transit shed shall include a reference to any building except a Queen's Warehouse in the occupation of the Government in which goods imported and not yet cleared are required or permitted by the Collector to be deposited; and
- (f) subject to such conditions as he thinks fit, stay or compound any proceeding for an offence under this Law or for the condemnation of anything as liable to forfeiture under this Law or to restore anything seized as forfeited under this Law.

Duties of officers

8. Officers shall carry out and conform to the lawful commands of the Collector and perform the sundry duties assigned to them under this Law and do other lawful things as may be necessary for the enforcement thereof.

9. Without prejudice to any other powers conferred upon them by this or any other law, every officer or any person acting under the direction of an officer may- Powers of officers

- (a) when acting within the jurisdiction in the course of his duty prevent the evasion or suspected evasion of any provision of this Law relating to the movement of goods and in particular may-
 - (i) with or without any warrant in that behalf, detain, board and enter any vessel wherever it may be and any place or thing within any Customs area, search any thing or person found thereon or therein and break open any fastened thing or device capable of being used for the concealment of goods;
 - (ii) when an officer has reasonable grounds to suspect that an offence has been committed under this Law, exercise like powers to those provided by paragraph (i) for the purpose of searching any place, premises, person or thing;
 - (iii) require any person to furnish orally or in such form as such officer may require any information relating to any goods, and to produce and to allow the officer to inspect and take extracts from or make copies of any invoice, bill of lading or other book or document relating to such goods or the movement or custody thereof; and
 - (iv) require evidence to be produced to his satisfaction in support of any information required by or under this Law to be provided in respect of goods imported or exported;
- (b) examine and take account of any goods which are for any purpose in Customs charge or subject to Customs scrutiny or in respect of which any drawback or relief is claimed, and may, for that purpose, require any container to be opened or unpacked;
- (c) take samples of any goods which he is, by paragraph (b), empowered to examine and to retain such samples on payment on behalf of the Collector of such sum as reasonably represents the wholesale value thereof, if so required by the person in possession of the goods;
- (d) allow remission of duty for losses as provided by section 35;
- (e) arrest with or without a warrant any person contravening or suspected of contravening section 50, 51, 52, 53 or 54:

Provided that any person arrested under this paragraph shall, as soon as practicable, be handed over by him to a constable or taken by him to a police station;

- (f) in cases of emergency, permit the discharge of goods and the disembarkation of passengers in places other than those prescribed;
- (g) permit the delivery of goods from a vessel's side; and
- (h) seize and detain any vessel or goods which he believes to be liable to forfeiture under this Law and hold such vessel or goods in the Queen's Warehouse subject to the right of appeal conferred by section 64(4) or, in default of such appeal, for disposal under section 28(1) or (4):

Provided that an officer's power of search conferred by subparagraphs (i) and (ii) of paragraph (a) may be exercised only by an officer of the same sex as the person searched and subject to the right of a person about to be searched to be taken before a Justice of the Peace or a superior of the officer concerned, and the Justice or superior shall consider the grounds for suspicion and direct accordingly whether or not the search is to take place.

PART III - Control of Vessels and Goods

Prohibited and restricted goods

10. (1) The import or export of -

- (a) base or counterfeit coin;
- (b) instruments and appliances for gambling;
- (c) all goods of which the import or export is prohibited or made an offence by any other Law; and
- (d) such other goods as may be prescribed by the Governor from time to time,

is absolutely prohibited.

(2) Unless they are transit goods, the export of lobster, conch or conch meat in any form is absolutely prohibited.

(3) The import or export of-

- (a) firearms and ammunition, unless accompanied by a permit signed by the Commissioner of Police;
- (b) explosives other than gunpowder and blasting powder;
- (c) caravans and prefabricated buildings other than storehouses and aircraft hangars; and
- (d) all goods of which the import or export is restricted or prohibited by any other law,

is restricted to such goods as may be expressly permitted under this or any other law or under the licence of the Governor in Council in that behalf.

(4) No person shall, after 22nd April, 1997, import into the Islands a Hummer motor vehicle.

(5) The Governor in Council may, by regulations, make such provision as he thinks necessary or expedient for prohibiting or regulating the import or export of all goods or of any class or description of goods.

(6) The power of the Governor in Council to make regulations under subsection (4) includes power to-

- (a) make different provision in relation to different classes or description of goods, or in relation to goods of the same class or description in the same or different circumstances;
- (b) make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business);
- (c) provide for such exceptions, limitations and conditions, and make such supplementary, incidental, consequential or transitional provisions, as the Governor in Council considers necessary or expedient; and
- (d) apply, with modifications and adaptations, any other enactment (including one contained in this Law) that deals with matters which, in the opinion of the Governor in Council, are similar to those being dealt with by the regulations.

11. (1) Unless prevented therefrom by mechanical failure, stress of weather or *force majeure*, all vessels bound for the Islands shall first proceed to a port and there be brought to a standstill at a boarding station until released by an officer.

Inward bound vessels to proceed direct to a port

(2) The Collector may in any port, from time to time, appoint boarding stations for the purpose of the boarding of or disembarkation from ships by officers.

(3) At any time while a ship is within the jurisdiction of the Islands or an aircraft is at an airport, any officer and any other person duly engaged in the prevention of smuggling may board such ship or aircraft and remain therein and rummage and search any part thereof.

12. (1) The master of every ship or the commander of every aircraft arriving in the Islands from any place outside the jurisdiction shall, as soon as practicable

Master or commander to make report

and within twenty-four hours at the latest, make a report in such form and manner and containing such particulars as the Customs may require, declare his last port or airport of call before arriving in the Islands and produce evidence that he was granted proper clearance from that port or airport for his voyage or flight to the Islands.

- (2) Subsection (1) applies to every ship arriving at a port -
 - (a) from any place outside the Islands; or
 - (b) carrying any goods brought in that ship from some place outside the Islands and not yet cleared on importation.
- (3) Subsection (1) applies to every aircraft arriving at any place in the Islands-
 - (a) from any place outside the Islands; or
 - (b) carrying passengers or goods taken on board that aircraft at a place outside the Islands being passengers or goods either -
 - (i) bound for a destination in the Islands and not already cleared at an airport; or
 - (ii) bound for a destination outside the Islands.
- (4) If the person by whom the report should be made fails to make report as required by or under subsection (1) -
 - (a) he is guilty of an offence under section 57; and
 - (b) any goods required to be reported which are not duly reported may be detained by any officer until so reported or until the omission is explained to the satisfaction of the proper officer, and may, in the meantime, be deposited in the Queen's Warehouse.
- (5) The person making the report shall, at the time of making it, answer all such questions relating to the ship or aircraft, to the goods carried therein, to the crew and to the voyage or flight as may be put to him by the proper officer, and if he refuses to answer he is guilty of an offence under section 57.
- (6) If at any time after a ship or aircraft carrying goods brought therein from any place outside the Islands arrives within the jurisdiction of the Islands, and before report has been made under this section -
 - (a) bulk is broken;
 - (b) any alteration is made in the stowage of any goods carried so as to facilitate the unloading of any part thereof; or
 - (c) any part of the goods is staved, destroyed or thrown overboard or any container is opened,

and the matter is not explained to the satisfaction of the proper officer, the master of the ship or commander of the aircraft, as the case may be, is guilty of an offence.

13. Subject to paragraphs (f) and (9) of section 9, no person shall discharge or cause or permit the discharge of goods or disembark or cause or permit the disembarkation of passengers or crew from any vessel, of passengers otherwise than upon a prescribed apron and all goods other than passengers' baggage accompanied by a passenger, shall forthwith be removed to a transit shed:

Place for discharge of cargo and disembarkation of passengers

Provided that goods declared and produced to and accepted by Customs as mail, bullion, coin or currency may be collected direct by the owner thereof.

14. (1) The importer of any goods shall, before or within seven days of the landing thereof, calculated from the date of report, deliver to the proper officer an entry appropriate to such goods in such form and manner and containing such particulars as Customs may require.

Entry of goods

(2) Goods entered under subsection (1) shall be entered for one of the following purposes -

- (a) home use;
- (b) warehousing;
- (c) transit or transshipment; or
- (d) temporary importation under section 19 with a view to subsequent re-exportation.

15. (1) Without prejudice to any other power conferred by this or any other law, an officer may examine and take account of any goods-

Examination of goods

- (a) which are imported;
- (b) which are in a warehouse or Queen's Warehouse;
- (c) which have been loaded into any ship or aircraft at any place in the Islands;
- (d) which are entered for exportation or for use as stores;
- (e) which are brought to any place in the Islands for shipment for exportation or as stores; or
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty is made,

and may, for that purpose, require any container to be opened or unpacked, and samples of any goods to be drawn.

(2) Any examination of goods by an officer shall be made at such place as Customs may determine for the purpose.

(3) If any imported goods are, without the authority of the proper officer, removed from Customs charge before they have been examined, those goods are liable to forfeiture under section 59.

(4) If any goods falling within subsection (3) are removed by a person with intent to defraud the Customs of any duty chargeable thereon or to evade any prohibition or restriction for the time being in force with respect thereto under or by virtue of this enactment, that person is guilty of an offence under section 54.

(5) If, in the course of an examination under subsection (1), there is found to be a deficiency or deterioration of goods as entered by reason of damage, destruction, pilferage, faulty packing, faulty storage or other cause, in any case if the goods are entered for warehousing and in any other case if the importer so requires, a landed account shall be raised showing the actual amount of dutiable goods available for clearing, and, insofar as Customs is satisfied that the full difference between the goods entered and the goods examined represents a loss which occurred before the landing of such goods, Customs shall allow a proportionate rebate of duty on the goods as entered and the goods, subject to the payment of the balance of such duty, shall be known as goods chargeable for duty on landed account.

(6) If, in the course of an examination under subsection (1), there are found to be excess goods of the same description as those entered, the importer shall be notified and on satisfactory explanation being given of the excess shall be required to present post entry of such surplus accompanied by payment of the relevant duty within three days of the receipt of such notice and, in default of such post entry and payment of duty, the goods may be removed to the Queen's Warehouse under section 28(1) or (4) as the case may be.

(7) Where any-

- (a) goods are imported concealed in a container holding goods of a different description;
- (b) imported goods are found, whether before or after delivery, not to correspond with the entry made thereof; or
- (c) imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,

those goods are liable to forfeiture under section 59.

16. Subject to such conditions as the Collector may think fit to impose, importers shall, on request, be permitted to draw samples of imported goods sufficient for any of the following purposes -

Samples

- (a) to determine liability to duty;
- (b) to determine the condition of the goods;
- (c) to determine the quality of the goods; or
- (d) for the purpose of demonstrating the goods.

17. (1) Subject to such conditions as the proper officer may require by way of bond or other security, Customs may give an importer permission to move uncustomed goods within the area of any port or airport, or from any port or airport to any specified place within the jurisdiction.

Movement of uncustomed goods

(2) Where, in pursuance of any power conferred by this or any other law, a seal, lock or mark is used to secure or identify any goods for the purposes of such law and at any time -

- (a) while the goods are in the Islands, the seal, lock or mark is wilfully and prematurely removed or tampered with by any person; or
- (b) before the seal, lock or mark is lawfully removed, any of the goods are removed by that person,

that person and the person in charge of the goods are guilty of an offence under this Law.

18. Subject to section 17(1), imported goods shall not be released from the port or airport of their arrival until such goods have been entered and -

Release of goods from port or airport of arrival

- (a) found not liable to duty;
- (b) full duty thereon has been charged and paid; or
- (c) security has been given in such form as Customs may require.

19. (1) Subject to such conditions as the Collector may think fit to impose, goods which the Collector is satisfied are temporarily imported with a view to subsequent exportation may, at the Collector's discretion, be imported free of duty for retention in the Islands for a period not exceeding six months, or, on prior receipt of a written request for retention, for such extended period as the Collector may authorise.

Temporary imports

(2) Any goods temporarily imported which are not re-exported within the period or extended period permitted under subsection (1) shall become liable to the full duty payable in respect of such goods or such part thereof, as the

Approval of bonded
warehouses

Collector may deem appropriate in the circumstances of the case, as if the same had been imported without reference to this section.

20. (1) The Governor in Council may approve, for such periods and subject to such conditions as he thinks fit, places of security for the deposit, keeping and securing of uncustomed goods of which entry has been made, without payment of duty during such storage, subject to and in accordance with regulations made under this Law; and any place of security so approved is referred to in this Law as a "bonded warehouse".

(2) The Governor may, from time to time, give directions as to -

- (a) the goods which may or may not be deposited in any particular bonded warehouse; and
- (b) the part of any bonded warehouse in which any class or description of goods may be kept or secured.

(3) If, after the approval of a warehouse as a bonded warehouse, the occupier thereof makes, without the consent of the Governor, any alteration therein or addition thereto, he is guilty an offence under this Law.

(4) Subject to section 25, the Governor may, at any time for reasonable cause, revoke or vary the terms of his approval of any bonded warehouse under this section.

(5) Any person contravening or failing to comply with any condition imposed or direction given by the Governor under this section is guilty of an offence.

Customs regulations

21. (1) The Governor in Council may, by regulations, regulate the deposit, keeping, securing and treatment of goods in and the removal of goods from a bonded warehouse.

(2) Such regulations may, without prejudice to the generality of subsection (1), include provisions -

- (a) imposing or providing for the imposition of conditions and restrictions subject to which goods may be deposited in, kept in or removed from a bonded warehouse or made available there to their owner for any prescribed purpose;
- (b) requiring goods deposited in a bonded warehouse to be produced to or made available for inspection by an officer on request by him;

- (c) permitting the carrying out on warehoused goods of such operations as may be prescribed by, or allowed under the regulations, and in such manner and subject to such conditions and restrictions as may be imposed;
- (d) for determining, for the purpose of charging or securing the payment of duty, the rates of customs duty to be applied to bonded goods and in that connection -
 - (i) for determining the time by reference to which bonded goods are to be classified;
 - (ii) for determining the time at which warehoused goods are to be treated as having been removed from a bonded warehouse; and
 - (iii) for ascertaining the quantity which is to be taken as the quantity of bonded goods;
- (e) enabling the Collector to allow goods to be removed from a bonded warehouse without payment of duty in such circumstances and subject to such conditions as the Collector may determine; and
- (f) permitting goods to be destroyed or abandoned to Customs without payment of customs duty in such circumstances and subject to such conditions as the Collector may determine,

and may contain such incidental or supplementary provisions as the Governor may think necessary or expedient for the protection of the revenue.

(3) Such regulations may make different provision for bonded warehouses or parts of bonded warehouses of different descriptions or for goods of different classes or descriptions or of the same class or description in different circumstances.

(4) Such regulations may make provision for the removal of goods from one bonded warehouse to another or from one part of a bonded warehouse to another part or for treating goods remaining in a bonded warehouse as if, for all or any prescribed purposes of this Law they had been so removed; and regulations for the removal of goods may, for all or any prescribed purposes of this Law, include provision for treating goods as having been warehoused or removed from a bonded warehouse (where they would not otherwise be so treated).

(5) Such regulations made under paragraph (a) or (c) of subsection (2) may also provide for the forfeiture of goods in the event of non-compliance with any condition or restriction imposed by virtue of that paragraph or in the event of

Deposit of goods in bonded warehouse, etc.

the carrying out of any operation on warehoused goods which is not, by virtue of paragraph (c), permitted to be carried out in a bonded warehouse.

22. (1) Before the deposit in a bonded warehouse of any goods, Customs shall examine such goods and raise a landed account thereof.

(2) Goods stored in a bonded warehouse shall be liable for duty upon the landed account raised in respect of such goods, less an allowance for legitimate deficiencies, if any, occurring between the time of taking the landed account and the time of deposit of the said goods in the bonded warehouse.

(3) Customs may, for good cause shown, waive the duty on any difference between the landed account and the amount of goods at time of deposit (after allowing for deficiencies, if any, referred to in subsection (2)), but otherwise such duty shall be payable forthwith.

(4) A warehouse keeper shall produce to any officer on request any goods lying in his bonded warehouse.

(5) Without prejudice to any restrictions or conditions imposed by the warehouse keeper, the owner of any warehoused goods may, with Customs authority, inspect such goods and their packings and prevent any loss therefrom and may draw samples therefrom for any purpose permitted by section 16.

(6) Warehouse keepers and the owners of warehoused goods may conduct prescribed operations for the preservation, separation, packing and repacking of warehoused goods and their preparation for sale, shipment or disposal.

Delivery from bonded warehouse

23. (1) Warehoused goods may be entered as required by Customs for release for-

- (a) home use on payment of duty;
- (b) re-export;
- (c) shipment as stores on any vessel or aircraft proceeding out of the jurisdiction; or
- (d) transfer to another bonded warehouse.

(2) Goods released under paragraph (a) of subsection (1) are customed goods.

(3) In the case of small quantities of goods, entry under subsection (1) shall only be permitted -

- (a) for samples drawn by importers or their agents;
- (b) for shipment as stores on any vessel or aircraft proceeding out of the jurisdiction;
- (c) for final clearance of a consignment;
- (d) for delivery under item 3 of the Second Schedule to the Customs Tariff Law (1998 Revision); or
- (e) at the discretion of the Customs.

1998 Revision

24. (1) This section applies where goods have been warehoused and, before they are lawfully removed from a bonded warehouse in accordance with a proper clearance thereof, they are found to be missing or deficient.

Bonded warehouse deficiencies

(2) In any case where this section applies, unless it is shown to the satisfaction of the Collector that the absence of or deficiency in the goods can be accounted for by natural wastage, accident or other legitimate cause, then, without prejudice to any penalty or forfeiture incurred under this or any other law, Customs may require the warehouse keeper or the owner of the goods to pay forthwith the whole or any part of the duty due on the missing goods or on the whole or any part of the deficiency.

(3) If, on the written demand of an officer, the warehouse keeper or the owner of the goods refuses to pay any sum which he is required to pay under subsection (2) he is, in addition, liable on summary conviction to a penalty of double that sum.

(4) This section has effect without prejudice to any penalty or forfeiture incurred under any other provision of this Law.

25. (1) The Governor may, by three months notice in writing to a warehouse keeper, order that any building or place used as a bonded warehouse shall cease to be so used and, in such case, the owners of any goods stored therein may deal with the same under section 23(1).

Revocation of approval of bonded warehouse

(2) All warehoused goods found lying in any bonded warehouse at the expiry of a notice given under subsection (1) shall forthwith be removed by Customs to the Queen's Warehouse and dealt with there under sections 28 and 29.

26. Where any goods are entered for transit or transshipment the proper officer may, subject to such conditions and restrictions as he thinks fit, permit such goods to be removed for such purpose without payment of duty.

Transit and transshipment

Queen's Warehouse

27. (1) All goods found lying in any transit shed, at the expiry of seven clear days after the reporting of the vessel or aircraft in which such goods were imported, may be removed to the Queen's Warehouse and there dealt with under sections 28 and 29.

(2) All goods forfeited, recovered, seized or detained under this Law shall be stored in the Queen's Warehouse unless by virtue of the size or nature of such goods this is impracticable, in which case they shall be stored as the Collector may direct.

(3) All apparently uncustomed goods which come into the custody of Customs in any manner not otherwise provided for in this Law, and which appear to be abandoned or unclaimed, shall be stored in the Queen's Warehouse.

Disposal of goods held in Queen's Warehouse

28. (1) All perishable goods brought to the Queen's Warehouse may be sold or otherwise disposed of at the discretion of the proper officer as soon as practicable.

(2) All non-perishable goods brought to the Queen's Warehouse under section 25(2) may be sold or otherwise disposed of, at the discretion of the proper officer, after the expiry of one month.

(3) All non-perishable goods brought to the Queen's Warehouse under section 27(1) and (3) may be sold or otherwise disposed of, at the discretion of the proper officer, after the expiry of three months.

(4) All non-perishable goods brought to the Queen's Warehouse as forfeited under any other provision of this Law may be sold or otherwise disposed of, at the discretion of the proper officer, after the period for appeal, if any, against the forfeiture or seizure has expired.

(5) Goods referred to in subsection (1), (2), (3) or (4) which appear to have no market value may be destroyed.

(6) If the Collector is of the opinion that any goods lying in the Queen's Warehouse have remained uncustomed in order to evade the payment of duty thereon he may order that the consignee of such goods shall be charged duty thereon as if the goods had been normally customed and may make an order for the disposal of such goods in any way which he may think expedient including the forfeiture of such goods.

(7) All non-perishable goods brought to the Queen's Warehouse may, before the time for the sale thereof stipulated in subsection (2), (3) or (4), be cleared by the importer thereof upon payment by him of the duty, handling charges, storage charges, freight and penalties, if any, incidental to such goods.

29. (1) Non-perishable goods sold from the Queen's Warehouse under section 28 may be sold by auction or tender at the direction of the Collector and such goods, if of an exceptional nature, may be sold by private treaty.

Mode of sale of goods in Queen's Warehouse and disposal of proceeds of sale

(2) The Collector may, for the purpose of securing favourable marketability, postpone the sale of goods under subsection (1).

(3) The balance, if any, of the proceeds of sale under subsection (1) shall, after the deduction of duty, removal expenses, storage charges, expenses of sale, freight and penalties, if any, in that order, be paid to any person claiming the same and proving himself entitled thereto and, after six months from sale, in default of any such claim, shall be appropriated to general revenue account.

30. (1) The master of every vessel which has arrived in the Islands (otherwise than in ballast) in which goods are to be exported shall, before any goods are taken on board (otherwise than under a stiffening order) obtain a certificate in the required form of its due clearance inwards, which certificate shall embody an entry outwards, signed by such master; and if such vessel carries goods taken on board at a port outside the jurisdiction, the master shall deliver to Customs the clearance outwards from such other port.

Duties of master of out going vessel

(2) No vessel shall depart from any port for any destination without clearance from Customs in such form as may be required.

(3) If it appears to any officer that an aircraft is intended or likely to depart for a destination outside the Islands from any place other than a Customs airport or from a Customs airport before Customs clearance is given therefrom, he may give such instructions and take such steps by way of detention of the aircraft or otherwise as appear to him necessary in order to prevent the flight.

(4) Whoever contravenes any instructions given under subsection (3) is guilty of an offence, and any goods carried on the aforesaid aircraft are liable to forfeiture.

31. (1) All goods for export shall be deposited in a transit shed and, before such goods are loaded for export, entry shall be made in respect thereof.

Entry of goods outwards

(2) The Collector may relax any requirement imposed by or under this section as he thinks fit in relation to any goods.

(3) Whoever contravenes or fails to comply with any directions of the Collector given under this section is guilty of an offence under section 57.

(4) If any goods are found not to correspond with any entry thereof made under this section, they are liable to forfeiture.

Clearance of coasting ship and transire

32. (1) Before any coasting ship departs from any port the master thereof shall deliver to the proper officer an account in such form and manner and containing such particulars as the proper officer may direct; and that account when signed by the proper officer shall be the transire, that is to say, the clearance of the ship from that port and the pass for any goods to which the account relates.

(2) If a coasting ship departs from any port without a correct account having been delivered, except as permitted by the proper officer or under and in compliance with any conditions imposed on the grant of a general transire, the master is guilty of an offence.

(3) The proper officer may examine any goods carried or to be carried in a coasting ship -

- (a) at any time while they are on board the ship; or
- (b) at any place in the Islands to which the goods have been brought for shipment in, or at which they have been unloaded from, the ship.

(4) For the purpose of examining any goods under subsection (1), the proper officer may require any container to be opened or unpacked, and any such opening or unpacking and any repacking shall be done by or at the expense of the proprietor of the goods.

(5) The proper officer may -

- (a) board and search a coasting ship at any time during its voyage; and
- (b) at any time, require any document which should properly be on board a coasting ship to be produced or brought to him for examination,

and if the master of the ship fails to produce or bring any such document to the proper officer, when required, he is guilty of an offence.

(6) The Collector may impose conditions as to the carriage of goods coastwise -

- (a) regulating the loading and unloading and the making waterborne for loading of the goods; and
- (b) requiring the keeping and production by the master of a coasting ship of such record of the cargo carried in that ship as may be considered necessary by Customs.

(7) Whoever contravenes or fails to comply with any condition made under subsection (6) is guilty of an offence and the goods, in respect of which the offence was committed, are liable to forfeiture.

(8) If, in the case of any coasting ship -

- (a) any goods are taken on board or removed therefrom at sea or at any place outside the Islands;
- (b) except for some unavoidable cause, the ship touches at any place outside the Islands or deviates from her voyage; or
- (c) the ship touches at any place outside the Islands and the master does not report that fact in writing to the proper officer at the first port within the jurisdiction at which the ship arrives thereafter,

the master is guilty of an offence.

(9) Any goods which are shipped and carried coastwise, or which, having been carried coastwise, are unloaded in any place in the Islands other than in accordance with subsections (1) to (8) or of any condition imposed under subsection (6), or are brought to any place for the purpose of being so shipped and carried coastwise, are liable to forfeiture.

(10) If any goods -

- (a) are carried coastwise or shipped as stores in a coasting ship contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any law; or
- (b) are brought to any place in the Islands for the purpose of being so carried or shipped,

then those goods are liable to forfeiture and the shipper or intending shipper of the goods is guilty of an offence.

33. (1) The time of importation of any goods shall be deemed to be the time when the ship or aircraft carrying such goods arrives within the jurisdiction.

Times of import and export

(2) The time of export of any goods shall be deemed to be the time when the ship or aircraft carrying such goods commences to move on its outward voyage.

Surplus stores

34. Surplus stores brought into the Islands in or on any vessel may, with the approval of the proper officer, be -

- (a) retained in such vessel under such security as the proper officer may require;
- (b) entered for home use on payment of duty; or
- (c) deposited in a bonded warehouse.

Accidental loss of goods under Customs control

35. Where Customs is satisfied that goods under or liable to Customs control have, by reason of fire or accident, suffered total or partial loss, duty shall not be chargeable otherwise than upon the proportionate value that the salvaged part, if any, of such goods bears to the whole.

Liability for fire and accident

36. Except where goods are in the custody of Customs no compensation shall be payable in respect of goods under Customs control which are damaged or destroyed by fire or accident not directly attributable to the fault of Customs.

Agents

37. (1) If any person requests an officer to transact any business relating to an assigned matter with him on behalf of another person, the officer may refuse to transact that business with him unless written authority from that other person is produced in such form as the officer may require.

(2) Subject to subsection (1), anything required by this Law to be done by the master of a ship, the commander of an aircraft or the importer or exporter of any goods may, except where the Collector otherwise requires, be done on his behalf by an agent duly authorised by him in writing.

PART IV - Incidence and Collection of Duty and Package Tax

Charge of duty

38. (1) There shall be charged, collected and paid through Customs to the Treasury upon all goods imported into the Islands and enumerated in the First Schedule to the Customs Tariff Law (1998 Revision) the several duties therein set forth.

1998 Revision

(2) The goods enumerated in the Second Schedule to the Customs Tariff Law (1998 Revision) may be admitted into the Islands free of duty subject to such conditions as may be imposed by the Governor or the Collector, as the case may be.

39. (1) No imported goods shall be delivered or removed on importation until the importer has paid to the Customs any duty chargeable thereon, and that duty shall, in the case of goods of which entry for home use is made, be paid on making the entry.

Liability for duty

(2) The rates of duty chargeable on imported goods shall be -

- (a) if entry is made thereof, except where the entry is for warehousing, those in force in respect of such goods at the time of presentation of the entry to Customs;
- (b) if entry is made thereof for warehousing, the rates in force at the time of the removal of the goods from the warehouse for home use; or
- (c) if no entry is made thereof, those in force in respect of such goods at the time of their importation.

40. Unless otherwise provided herein or in the Customs Tariff Law (1998 Revision) all imported goods subject to duty shall be charged to such duty at an *ad valorem* rate expressed as a percentage of the value of such goods as ascertained in accordance with the method of calculation provided in section 41.

Basis of valuation
1998 Revision

41. (1) The value of any imported goods shall be taken to be the normal price, that is to say, the price which they would fetch at the time when they are entered for home use (or, if they are not so entered, at the time of importation) on a sale in the open market between a buyer and seller independent of each other.

Calculation of value

(2) The normal price of any imported goods shall be determined on the following assumptions -

- (a) that the goods are treated as having been delivered to the buyer at the port or place of importation;
- (b) that the seller will bear freight, insurance, commission and all other costs, charges and expenses incidental to the sale and the delivery of the goods at the port or place, except buying commission not exceeding five per cent of the total value which is shown to the satisfaction of Customs to have been paid to agents; and
- (c) that the buyer will bear any duty or tax payable in the Islands and other post-importation charges.

(3) A sale in the open market between buyer and seller independent of each other pre-supposes -

- (a) that the price is the whole consideration;

- (b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller (or any person associated in business with him) and the buyer (or any person associated in business with him) other than the relationship created by the sale of the goods in question; and
 - (c) that no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.
- (4) Where the goods to be valued -
- (a) are manufactured in accordance with any patented invention or are goods to which registered design has been applied; or
 - (b) are imported with a foreign trade mark, or are imported for sale (whether or not after further manufacture) under a foreign trade mark,

the normal price shall be determined on the assumption that the price covers the right to use the patent, design or trade mark in respect of the goods.

(5) Two persons shall be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, both have a common interest in any business or property or some third person has an interest in the business or property of both of them.

(6) For the purpose of determining the price of goods under subsection (2) which are uninsured, there shall be substituted for the cost of insurance a notional insurance cost equal to one per cent of the carriage and freight cost of such goods.

(7) Discounts and similar reductions in invoiced values will be deductible from the value for duty only if it can be shown to the satisfaction of Customs that such deductions are available to any buyer purchasing similar goods from the same supplier, do not result from a special relationship between buyer and seller and do not, in any case, exceed twenty per cent of the invoiced value.

(8) The Collector may, for the purposes of this section, require an importer or other person concerned with the importation of goods to furnish, in such form as may be required, such information as is necessary for a proper valuation thereof, and to produce any books of accounts or documents of whatever nature relating to the purchase, importation or sale of the goods by that person.

Re-imported goods

42. (1) Where any goods, whether or not made or produced within the Islands are re-imported into the Islands after exportation therefrom, and it is shown to the

satisfaction of Customs that any duty chargeable in respect of the goods prior to their exportation has been paid, and either that no drawback of such duty has been paid or any duty refunded or that any drawback so paid or duty refunded has been repaid to the Collector, then -

- (a) if it is shown that the goods while abroad have not been subjected to any process, repair, renovation or improvement, they may be delivered without payment of duty for home use; or
- (b) if it is shown that the goods while abroad have been subjected to a process of repair, renovation or improvement and if the owner of such goods has, at the time of entering them for export, declared the purpose of such export, and if such goods are re-imported in repaired, restored or processed form but without there being any substantial change in their form or character, then those goods shall be chargeable with duty as if the increase in the value of the goods attributable to the process were the whole value thereof.

(2) For the purpose of paragraph (b) of subsection (1) any sum contracted to be paid for the execution of a process or repair on any goods shall be *prima facie* evidence of the increase of the value of the goods attributable to such process or repair; but this provision shall be without prejudice to any other provision as to the ascertainment of the value of goods.

(3) When goods are re-imported into the Islands after having been processed abroad to such an extent that there has been a substantial change in the form and character of such goods, then duty shall be chargeable on the whole value of the goods, determined under section 41.

43. The following may be imported free or partially free from any charge to duty, as the case may be -

Relief from duty

- (a) goods entered for home use which are proved to the satisfaction of Customs to have had duty paid in respect of them having been imported into the Islands on a previous occasion;
- (b) goods imported by the holder of a duty free franchise in respect of such goods; and
- (c) goods imported by or specifically on behalf of a person, entitled to full or partial relief in respect of such goods under this or any other law.

44. (1) Drawback shall be payable by Customs upon the following, provided the goods have not been used while in the Islands -

Drawback

- (a) goods re-exported in the packages in which they were imported;
- (b) goods exported as stores on any aircraft or vessel proceeding out of the jurisdiction;
- (c) spirits, wines and tobacco sold to passengers actually embarking on a vessel departing from the Islands:

Provided that this paragraph does not apply to any spirits, wines or tobacco sold at an airport or port where a bonded duty-free shop system is operated; or

- (d) goods deposited in bonded warehouses:

Provided that no drawback is payable on -

- (i) goods remaining in the Islands two years after import; or
- (ii) goods which, if sold for home use, would realise less than the amount of drawback claimed.

(2) Drawback shall be claimed within one year of the shipment of the goods relevant thereto.

(3) No claim for drawback shall be entertained unless the amount claimed exceeds ten dollars.

(4) In subsection (1)-

“bonded duty-free shop” means a retail outlet prescribed by the Governor at a departure lounge or other place controlled by Customs at a port or airport.

Refund of duty where goods are returned or destroyed

45. (1) Subject to such conditions as may be imposed by Customs, where it is shown to the satisfaction of Customs -

- (a) that customed goods were imported under a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract, or that the goods were damaged in transit; and
- (b) that the importer with the consent of the seller either -
 - (i) returned the goods unused to the seller and that such goods have been duly entered outwards; or
 - (ii) with Customs’ prior approval, destroyed the goods unused,

the importer may obtain from Customs repayment of any duty paid on the importation thereof.

(2) Nothing in this section shall apply to goods imported “on approval” or “sale or return” or on similar terms.

46. There shall be granted to members of Her Majesty’s armed forces in the Islands such pecuniary allowances in lieu of relief from duty as the Governor may, from time to time, prescribe subject to such conditions as he may see fit to impose.

Concession to armed forces of the Crown

47. (1) There shall be charged, collected and paid at the time of first entry thereof a package tax on all goods imported into the Islands at the rates shown in the Third Schedule to the Customs Tariff Law (1998 Revision) and, notwithstanding this or any other law (but subject to subsection (2) and section 48) no exemption, relief or drawback shall be given on such tax except in the case of goods imported -

Package tax

1998 Revision

- (a) by Government;
- (b) under the terms of any inter-governmental agreement; or
- (c) under item 3, 5 or 9 of the Second Schedule to the Customs Tariff Law (1998 Revision).

(2) Notwithstanding subsection (1), no package tax is chargeable on imported goods discharged at the Port of George Town or Cayman Brac as prescribed in the Customs Regulations.

48. The Governor in Council may, in any particular case, waive or order refund of any duty, package tax or part thereof which would otherwise be payable or would not be liable to refund under this Law, subject to such conditions as he may think fit to impose.

Governor may waive or order refund

PART V - Contraventions and Consequences Thereof

49. Any officer who -

Offences by officers

- (a) solicits or accepts a bribe;
- (b) conducts a personal search of any person without a belief in a lawful reason for so doing (the onus of proving which is upon such officer);
- (c) imports or connives at the importation of goods into the Islands other than through due Customs process;
- (d) fails to deliver up to Customs any goods which it is his duty to deliver up;
- (e) in connection with his duty commits perjury or gives to any person information in the truth of which he does not believe; or
- (f) conspires with any person to contravene this Law,

is guilty of an offence.

Offences against officers 50. Whoever-

- (a) bribes or attempts to bribe any officer;
- (b) obstructs any officer acting in the course of his duty;
- (c) personates any officer;
- (d) assaults any officer; or
- (e) restricts the liberty of any officer,

is guilty of an offence.

Smuggling

51. Whoever-

- (a) clandestinely brings into the jurisdiction prohibited, restricted or any other description of goods (other than goods exempt from the Customs process); or
- (b) exports any goods from the Islands, in respect of which entry is not made within the time or in the form required by Customs or in such manner as to disclose the fact of the import or export of such goods,

is guilty of smuggling such goods into or out of the Islands, as the case may be.

Engagement in smuggling

52. Whoever, in preparation, execution, furtherance or concealment of an act of smuggling -

- (a) makes any signal or communication;
- (b) jettisons any cargo;
- (c) destroys any evidence,
- (d) fails to land or heave to when ordered to do so by an officer;
- (e) harbours any person, vessel or thing; or
- (f) does any other thing by commission or omission calculated to aid, abet, further conceal or facilitate any actual or contemplated smuggling operation,

is guilty of being engaged in a smuggling operation.

Presumption of being engaged in smuggling

53. (1) Whoever (unless without guilty knowledge, the proof of which is upon him) is found in possession or control of any-

- (a) smuggled goods; or
- (b) vessel or thing used for or adapted to be used for smuggling or concealing goods,

is guilty of being engaged in smuggling.

(2) Guilty knowledge, for the purpose of subsection (1), will be presumed unless the person in possession or control of any vessel or thing satisfies the court that he has exercised every reasonable care and discharged every part of his duty with respect to the control or management of such vessel or thing to prevent the use or potential use of the same for any smuggling operation or concealment of goods.

54. Whoever, directly or indirectly by any misrepresentation, act, omission or device, evades or attempts to evade payment of the whole or any part of the duty or package tax payable on any goods or who wrongfully obtains or attempts to obtain drawbacks thereon is (except in the absence of guilty knowledge, proof of which is upon such person) guilty of evading customs duty.

Evading duty

55. Whoever, without lawful excuse, deals in or has in his possession or control any uncustomed goods is guilty of evading customs duty in respect of such goods.

Possession, etc., of goods on which duty has not been paid

56. Whoever, in offering goods for sale, states, in order to induce any person to buy such goods, that such goods are smuggled goods or uncustomed goods is guilty of inviting such person to connive in smuggling or evasion of customs process, as the case may be.

Offering goods for sale under colour of having been smuggled, etc.

57. Whoever, without thereby intending to smuggle or evade the payment of duty or package tax on any goods, wilfully or negligently contravenes any procedural requirement of this Law, commits a procedural offence.

Procedural offences

58. Whoever-

- (a) being the master of a vessel, fails when so required to provide any officer with victuals and sleeping accommodation when such officer is not able conveniently to go ashore for the same;
- (b) clandestinely, or without lawful authorisation in that behalf, opens any bonded warehouse;
- (c) causes loss or damage to, or otherwise interferes with any property in Customs charge; or
- (d) contravenes any other provision of this Law for which no penalty is provided by any other section,

Miscellaneous offences

is guilty of an offence.

59. (1) Where -

Forfeiture

- (a) except with the permission of Customs, any imported goods, being goods chargeable on their importation with customs duty or package tax, are, without payment of that duty or tax -
 - (i) unshipped in any port;
 - (ii) unloaded from any aircraft in the Islands; or
 - (iii) removed from their place of importation or examination or any approved transit shed;
- (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under this or any other law;
- (c) any goods being goods chargeable with any duty or goods, the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or aircraft;
- (d) any goods are imported concealed in a container holding goods of a different description;
- (e) any imported goods are found, whether before or after delivery, not to correspond with the entry made thereof; or
- (f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,

those goods are liable to forfeiture.

(2) Where any thing has become liable to forfeiture under this Law -

- (a) any ship, aircraft, vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purpose of the commission of the offence for which it later became so liable; and
- (b) any other thing mixed, packed or found with the thing so liable,

is also liable to forfeiture.

(3) Where any vessel or thing is used for or adapted to be used for smuggling or concealing goods it is liable to forfeiture.

(4) Where any ship, aircraft, vehicle or animal has become liable to forfeiture, whether by virtue of subsection (1) or otherwise, all tackle, apparel or equipment thereof is also liable to forfeiture.

(5) The owner of a vessel forfeited under subsection (2) or (3) may elect to redeem it from forfeiture on payment to the Collector of twelve thousand dollars or a sum equal to fifty per cent of the value of the vessel, whichever is the greater.

(6) For the purposes of subsection (5) the value of a vessel is the amount at which it is valued for cover by insurance against total loss, or, in the case of a vessel not insured or not insured fully, such sum as is assessed by the Collector.

60. Whoever is found guilty of an offence of smuggling or evasion of duty or package tax shall, in addition to the duty payable and to any penalty imposed by this or any other law, be ordered to pay a fine equal to three times the duty and tax on the goods involved, being the subject of such offence, or, in the case of prohibited goods, three times the current saleable value of such goods.

Mandatory penalty

61. (1) Whoever is guilty of an offence under sections 49 to 56 is liable, in addition to any mandatory penalty and forfeiture, on summary conviction to a fine of six thousand dollars and to imprisonment for five years.

Penalties

(2) Whoever commits an offence under section 57 shall, subject to any ruling of the Collector under paragraph (b) of section 7 and subject to a right of appeal to a court of summary jurisdiction, pay to Customs a fine not exceeding one thousand dollars.

(3) Whoever is guilty of an offence under paragraphs (a), (b) or (d) of section 58 is liable on summary conviction to a fine of twelve hundred dollars and to imprisonment for six months.

(4) Whoever is guilty of an offence under paragraph (c) of section 58 shall, on summary conviction, in addition to any other punishment imposed, be required to make good any damage thereby occasioned to public property and, in the case of damage to any vessel, in lieu of making good such damage, to pay to Customs three times the cost of reinstatement thereof.

62. In any dispute touching any matter arising out of this Law, Customs may sue and be sued in its own name and shall be entitled to recover and liable to pay costs in the same manner as any other litigant.

Customs may sue and be sued

63. Officers may exhibit information and conduct prosecutions in any matters arising out of this Law in any court of summary jurisdiction.

Officers may represent Customs in summary courts.

64. (1) The proper officer shall, except as provided in subsection (2), give notice of the seizure of any thing as liable to forfeiture and of the grounds

Notice of seizure

therefor to any person who to the officer's knowledge was, at the time of the seizure, the owner or one of the owners thereof.

(2) Notice need not be given under subsection (1) if the seizure was made in the presence of -

- (a) the person whose offence or suspected offence occasioned the seizure;
- (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
- (c) in the case of anything seized in a ship or aircraft, the master or commander, as the case may be.

(3) Notice under subsection (1) shall be given in writing and shall be deemed to have been duly served on the person concerned -

- (a) if delivered to him personally;
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business, or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address within the Islands, or his address is unknown, by publication of notice of the seizure in the Gazette.

(4) Any person claiming that any thing seized as liable to forfeiture is not so liable, may, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, appeal to a summary court, which court shall, after hearing the parties, make such order with respect to such seizure, including any order for costs, as may be considered appropriate.

(5) Any appeal under subsection (4) shall specify the name and address of the appellant and, in the case of a claimant who is outside the Islands, shall specify the name and address of an attorney-at-law in the Islands who is authorised to accept service of process and to act on his behalf.

(6) If, on the expiration of the relevant period under subsection (4) for the giving of notice of appeal in respect of any thing, no such notice has been lodged with a summary court, or if, in the case of any such notice being given, any requirement of subsection (5) is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

(7) Where any thing is, in accordance with subsection (6), condemned or deemed to have been condemned as forfeited, then, without prejudice to any

delivery up for sale of the thing by the Collector under subsection (8), the forfeiture shall have effect as from the date when the liability to forfeiture arose.

(8) Where any thing has been seized as liable to forfeiture, the Collector may, at any time if he thinks fit, and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned as forfeited -

- (a) deliver it up to any claimant upon his paying to Customs such sum as the Collector thinks proper, being a sum not exceeding that which, in his opinion, represents the value of the thing, including any duty or tax chargeable thereon which has not been paid; or
- (b) if the thing seized is a living creature or is in the opinion of the Collector of a perishable nature, sell or destroy it.

65. Where any offence against this Law is committed by a corporation, the president or chairman and every director shall each be liable to the penalties provided and guilty of a like offence, unless he proves the act or omission constituting the offence took place without his knowledge or consent.

Vicarious liability

66. Persons found knowingly to have contributed to the commission of any offence under this Law are guilty of the offence found to have been committed and each liable to the penalty for such offence and are jointly and severally liable for the payment of any sum required to be paid as a result of the commission of such offence including any sum for damages or costs.

Joint responsibility

67. All charges, fees, monetary penalties, costs and damages required to be paid in respect of any matter arising out of this Law shall be paid direct to the Collector who may enforce payment of the same through the appropriate process of a summary court or a court ordering such payment, as the case may be, or by the exercise of a lien on any relevant goods held in Customs charge and which, but for this section, would be deliverable or returnable to the owner.

Recovery of penalties

68. Any person aggrieved by a decision of a court of inferior jurisdiction to that of the Grand Court in any matter arising out of this Law may appeal to the Grand Court against that decision under the usual process provided for such appeals and the decision of the Grand Court shall, subject to section 70, be final and binding on all parties.

Appeals

69. Any person, including an officer, giving information or assistance to the Customs leading to -

Rewards

- (a) the detection of smuggling;

- (b) the discovery in any unauthorised place of uncustomed goods;
- (c) the seizure of any vessel or goods; or
- (d) the conviction of any person for an offence under this Law,

may be paid out of Customs' funds such reward as the Collector, in his discretion, may in each case determine.

Special powers of
Governor in Council

70. Notwithstanding that certain penalties and forfeitures are by this Law expressed to be mandatory, the Governor in Council may reduce or remit any penalty imposed by or under this Law, vary any order made or thing done under this Law and, in order to assist him to arrive at a decision, consult with any neutral and expert person as to any valuation or any other matter under consideration.

PART VI - Miscellaneous

Expenses of
implementing Customs
requirements

71. All expenses incurred in the handling, moving and dealing with goods for the purpose of enabling officers to carry out their duties shall be borne by the owners of such goods, and Customs shall be under no obligation to provide instruments or apparatus for the purpose of weighing, measuring, assessing or otherwise dealing with such goods for Customs purposes.

Bonds and security

72. (1) Without prejudice to any express requirement as to security contained in this Law, the Collector may, if he thinks fit, require any person to give security by bond or otherwise for the observance of any condition imposed by Customs.

(2) Any bond taken for the purposes of any assigned matter-

- (a) shall be taken on behalf of the Financial Secretary;
- (b) shall be valid, notwithstanding that it is entered into by a person under the age of eighteen years; and
- (c) may be cancelled at any time by, or by order of, the Collector.

Regulations

73. The Governor in Council may make regulations for the following purposes -

- (a) providing for scales of fees or charges to be levied under paragraph (c) (i) and (ii) of section 7 and in respect of the removal, handling, storage and sale of goods under sections 27, 28 and 29;
- (b) any matter or thing required to be prescribed; and
- (c) generally for giving effect to this Law.

Provisional collection of
customs duties

74. (1) Where the Legislative Assembly passes a resolution which -

- (a) provides for a charge of customs duty upon a new item of goods, for the variation (with or without modification) or for the abolition of any rate of customs duty; and
- (b) contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under this Law,

the resolution, subject to subsection (2), shall for a period expiring at the end of one month after the date on which it is passed, have statutory effect as if contained in a law.

(2) A resolution shall cease to have statutory effect under subsection (1) if the provisions giving effect to it are rejected during the passage of the Bill containing them through the Legislative Assembly or if all Bills relating to the measures in the resolution have not had their first reading within the next fifteen days on which the Legislative Assembly sits after the vote on the resolution.

(3) Where a resolution ceases to have statutory effect by virtue of subsection (2) or where the period of one month terminates before a law comes into operation providing for the charge of customs duty or, as the case may be, varying or abolishing any rate of any customs duty, any money paid in pursuance of the resolution shall be paid or made good, and any deduction made in pursuance of the resolution shall be deemed for all purposes to be an unauthorised deduction.

(4) Where the rate of any customs duty is altered by any resolution under subsection (1), and any Bill which has been introduced into the Legislative Assembly to give effect to that resolution provides for an alteration of the rate of drawback to be allowed in respect of that rate of customs duty then, so long as the resolution continues to have statutory effect, drawback under section 44 shall be allowed in accordance with the rate provided in the Bill, subject to any necessary adjustment in case the rate of drawback as enacted by the Legislative Assembly differs from the rate provided in the Bill.

Publication in consolidated and revised form authorised by the Governor in Council this 6th day of January, 1998.

Carmena H. Parsons
Clerk of Executive Council

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