



BERMUDA

REVENUE ACT 1898

1898 : 16

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Government of Bermuda Form 1C (Reg. 4 modified by section 122C of the Revenue Act 1898)

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[preamble and words of enactment omitted]

PART I

PRELIMINARY

Division of Act into Parts

1 *[omitted]*

Interpretation

2 In this Act, unless the context otherwise requires—

“appealable decision” means any decision referred to under section 122B(1);

“Bermuda” includes the territorial waters of Bermuda and its airspace;

“boat” includes every description of vessel used in navigation;

“bonded warehouse” means any premises licensed by the Collector of Customs under section 50 in respect of which a licence is in force;

“Collector” means the Collector of Customs;

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“customs area” means any place appointed to be a customs area by the Collector by notice published in the Gazette;

“customs area operator” means a person approved by the Collector as a customs area operator under section 39;

“customs declaration” means any declaration prescribed by the Collector of Customs under section 16;

“customs officer” means any officer of the Customs Department or any member of the Bermuda Police Service;

“customs value” has the meaning prescribed under section 24(1);

“the Department” means the Customs Department established under the Customs Department Act 1952 [*title 14 item 11*];

“drawback” means a refund of the import duties paid in Bermuda on any goods;

“for home use” means for home consumption or for any use other than for immediate exportation or shipment as stores;

“goods” includes ships, vessels, aircraft, containers and all kinds of articles, wares, merchandise, natural products and livestock;

“importer” includes—

- the owner or any other person for the time being possessed of or beneficially interested in any goods at the time of their importation or at the time of taking the goods out of bond from a bonded warehouse; and
- any person who signs, as authorised agent on behalf of any such person, any document relating to such goods;

“master” means the master, officer or other person in charge of any ship, but does not include the pilot unless he is also the master;

“Minister” means the Minister of Finance;

“outlying Acts” has the meaning prescribed under section 84A(5);

“owner”, when used with reference to goods, means the owner if there is only one owner, or any or all of the owners if there are more than one;

“port authority” means the Government of Bermuda, Corporation of Hamilton, Corporation of St. George’s or West End Development Corporation;

“prescribed fee” means the fee prescribed under the Government Fees Act 1965.

“proper officer” means proper officer of the Customs Department;

“the Queen’s Warehouse” means any premises declared by the Collector of Customs under section 84 to be a Queen’s Warehouse;

“reviewable decision” means any decision referred to under section 122(1);

“ship” includes every description of vessel used in navigation;

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"ship or vessel"*[Deleted by 2012 : 3 s. 2]*

"Tax Appeal Tribunal" means the Tribunal established under section 24 of the Taxes Management Act 1976;

"Taxes Acts" means the Taxes Management Act 1976 and any statutory provision relating to the taxes to which the Taxes Management Act 1976 applies;

"uncustomed goods" means—

- (a) goods liable to duty that has not been paid;
- (b) goods which have not been duly entered; or
- (c) goods, currency or negotiable instruments the importation or exportation of which is restricted or prohibited by or under any Act.

"vessel" includes every description of vessel used in navigation.

"warehouse" means any place in which goods entered to be warehoused may be lodged, kept and secured.

[section 2 amended by 1995:4 effective 22 December 1995, by 1997:37 effective 6 May 1999, "customs declaration" inserted by 2000:30 s.3 effective 8 November 2000; "goods" substituted, "appealable decision", "customs value", "outlying Acts", "reviewable decision", "Tax Appeal Tribunal" and "Taxes Acts inserted, by 2004:6 s.2 effective 26 March 2004; "customs declaration" substituted by 2006:5 effective 1 April 2006; "goods" and "owner" amended, "bonded warehouse" and "importer" inserted, by 2007:13 s.2(1) effective 29 March 2007;NB All references to "bonding warehouse" in the Act repealed and replaced by "bonded warehouse" by 2007:13 s.2(2) effective 29 March 2007; "Bermuda", "boat", "Collector", "customs area", "customs area operator", "port authority", "ship", "uncustomed goods" and "vessel" inserted by 2012 : 3 s. 2 effective 1 June 2012; "uncustomed goods" deleted and substituted by 2012 : 16 s. 2 effective 1 June 2012; "for home use" inserted by 2013 : 8 s. 15 effective 1 April 2013]

Powers of Collector of Customs and customs officers

2A Any powers under this Act or any other statutory provision that are authorised, expressly or by implication, to be exercised by the Collector of Customs, a customs officer or a proper officer for the purposes of collecting, protecting or safeguarding the revenue may also be exercised by those persons for the purposes of enforcing any prohibition or restriction on the importation or exportation of goods.

[section 2A inserted by 2008:14 s.2 effective 25 March 2008]

Application of Act to transport by air

3 In this Act—

- (a) any reference to a ship or vessel shall be construed where the context allows, as including a reference to an aircraft;
- (b) any reference to the master of a ship shall be construed, where the context allows, as including a reference to the commander of an aircraft;
- (c) any reference to a line of ships shall be construed as a reference to a company operating an aviation service; and

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- (d) any reference to a port or harbour shall, as respects an aircraft, be construed as including a reference to an airport.

PART II
ENTRY OF GOODS
ENTRY INWARDS

Advance delivery of inward passenger and crew manifest

3A (1) Subject to section 3B, the master of every ship departing for Bermuda shall, before the ship arrives in Bermuda, deliver by electronic means to a customs officer a manifest setting out the following information in respect to every person on board the ship—

- (a) first and last names;
 - (b) sex, date of birth and nationality; and
 - (c) passport number, country of issue and date of expiry of passport.
- (2) The manifest shall show separately—
- (a) the names and particulars of the passengers on board the ship;
 - (b) the names of the passengers whose journey is to be completed in Bermuda;
 - (c) the names and particulars of the members of the crew of the ship; and
 - (d) the names and particulars of any other persons on board the ship (including persons rescued at sea and stowaways).
- (3) In the case of an aircraft, the duty to deliver the manifest may be discharged by an agent or representative of the aircraft, on behalf of the commander.

[section 3A inserted by 2007:13 s.3 effective 29 March 2007]

Notices respecting manifests

- 3B (1) The Collector of Customs, by notice published in the Gazette, may prescribe
- (a) the categories of ships in respect of which section 3A(1) applies;
 - (b) the electronic means by which and time within which manifests referred to in section 3A(1) must be delivered; and
 - (c) any additional information that must be included in manifests required to be delivered under section 3A(1).
- (2) The Collector of Customs may prescribe different times and manners of delivery and different information to be included in a manifest for different means of transport or for different categories of ships, crew or passengers.

[section 3B inserted by 2007:13 s.3 effective 29 March 2007]

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Failure to deliver manifest

3C (1) A master or commander who fails to deliver the manifest as required by section 3A(1), or who delivers a manifest containing information that he knows or ought to know is false, shall forfeit a sum in the level 4 amount.

(2) An agent or representative who delivers a manifest on behalf of the commander, but fails to do so as required by section 3A(1), or who delivers a manifest containing information that the agent or representative knows or ought to know is false, shall forfeit a sum in the level 4 amount.

[section 3C inserted by 2007:13 s.3 effective 29 March 2007]

Arrival of ship or aircraft; duty to report

4 (1) The master of every ship arriving at Bermuda, whether laden or in ballast, shall directly, and before bulk is broken, make, subscribe, declare to, and deliver to the Collector of Customs, or other proper officer, a report in writing of the arrival and voyage of such ship, stating her name, country and tonnage, and if British, the port of registry, the name and country of the owner, the number of the crew, and how many are of the country of such ship, and whether the ship is laden or in ballast, and if laden the marks, numbers and contents of every item, package and parcel of goods on board, and where the same was laden, and where and to whom consigned, and where any, and, if any, what, goods have been unladen during the voyage; and the master shall further answer all such questions concerning the ship and cargo, and the crew and the voyage, as may be demanded of him by such officer.

(1A) The Collector of Customs may, as an alternative to delivery of the written report in paper form, require the master to deliver the report referred to in subsection (1) electronically by such means, and at such time before the arrival of the ship in Bermuda, as the Collector may specify.

(2) If any goods are unladen from any ship before a report referred to in subsection (1) or (1A) is made, or if the master fails to make such report in the manner or at the time required under those subsections or makes an untrue report or does not truly answer the questions demanded of him, then the master shall forfeit the level 4 amount, and if any goods are not reported, such goods shall be forfeited.

(3) Notwithstanding anything in subsection (1) or 1(A) any agent or representative of any aircraft may make, subscribe, declare to and deliver a report in writing of the matters specified in subsection (1) or (1A); and if the agent or representative of an aircraft acts in pursuance of the foregoing provision of this subsection, any duty or requirement imposed upon the master by subsection (1) or 1(A) shall, in relation to the aircraft, devolve upon the agent or representative; and if any such duty or requirement is not discharged or complied with, or if any goods are not reported, then the like forfeitures shall, respectively, be imposed as mentioned in subsection (2):

Provided that the provision of subsection (2) imposing forfeiture if goods are unladen before the report is made shall not apply in relation to goods unladen from an aircraft.

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(4) The report called for by subsection (1) shall, in the case of pleasure craft, be delivered to the Collector of Customs at the designated yacht reporting centre.

(5) In this section and section 7—

“designated yacht reporting centre” means a place designated by the Collector of Customs by notice published in the Gazette as the designated yacht reporting centre for pleasure craft generally or, as the case may be, for any particular class or category of pleasure craft;

“pleasure craft” means a vessel which at the time of its arrival is being used for private recreational purposes.

[section 4 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; subsections (1), (2) and (3) amended, and (1A) inserted, by 2007:13 s.4 effective 29 March 2007]

Duty of agent to sign report

5 The agent entering any ship on her arrival in Bermuda shall, unless (in the case of an aircraft) he has himself made the report, sign the report in writing required by section 4, and the Collector of Customs, or other proper officer, shall not be bound to receive any report which is not so signed.

Advance delivery of cargo manifest

5A (1) Subject to section 5B, the master of every ship departing for Bermuda shall, before the arrival of the ship in Bermuda, deliver by electronic means to a customs officer a manifest setting out the following information in respect to all goods on board the ship—

- (a) the marks, numbers and contents of every item, package and parcel of goods on board his ship intended to be landed in Bermuda; and
- (b) the names of the consignees, as far as they are known to the master.

(2) In the case of an aircraft, the duty to deliver the manifest may be discharged by an agent or representative of the aircraft, on behalf of the commander.

[section 5A inserted by 2007:13 s.5 effective 29 March 2007]

Notices respecting manifests

5B (1) The Collector of Customs, by notice published in the Gazette, may prescribe

- (a) the categories of ships in respect of which section 5A(1) applies;
- (b) the electronic means by which and time within which manifests referred to in section 5A(1) must be delivered; and
- (c) any additional particulars, declarations and documents to be included in manifests required to be delivered under section 5A(1).

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(2) The Collector of Customs may prescribe different times and manners of delivery and different information to be included in a manifest for different means of transport or for different categories of ships or goods.

[section 5B inserted by 2007:13 s.5 effective 29 March 2007; amended by 2008:14 s.3 effective 25 March 2008]

Failure to deliver manifest

5C (1) A master or commander who fails to deliver the manifest as required by section 5A(1), or who delivers a manifest containing information that he knows or ought to know is false, shall forfeit a sum in the level 4 amount.

(2) An agent or representative who delivers a manifest on behalf of the commander, but fails to do so as required by section 5A(1) or who delivers a manifest containing information that the agent or representative knows or ought to know is false, shall forfeit a sum in the level 4 amount.

(3) Any goods on board a ship that are not set out in a manifest as required under section 5A(1) shall be forfeited.

[section 5C inserted by 2007:13 s.5 effective 29 March 2007]

Duty to deliver schedule of cargo

6 (1) The master of every ship arriving at Bermuda shall, together with the report required by section 4, deliver to the Collector of Customs, or Assistant Collector of Customs, or other proper officer, a schedule, subscribed by the master, of the marks, numbers and contents of every item, package and parcel of goods on board his ship intended to be landed in Bermuda, and of the names of the consignees, as far as such particulars are known to the master, which schedule shall be in a form prescribed by the Collector of Customs; and if the master of any such ship having goods on board for landing or delivery in Bermuda fails or neglects to deliver a full and accurate schedule thereof as required by this section he shall forfeit the level 4 amount:

Provided that whenever the master of any ship on entering his ship makes it appear to the satisfaction of the Collector of Customs, or Assistant Collector of Customs, or other proper officer, that he cannot for want of sufficient information specify in his report of his cargo all the particulars required by section 4 the Collector of Customs, or Assistant Collector of Customs, or other proper officer, may dispense with such particulars as in his judgment cannot be obtained or furnished for the purposes of such report; and in all other particulars every master shall comply with the requirements of section 4 under the penalty thereby imposed.

(2) The Collector of Customs may, as an alternative to delivery of the written report in paper form, require the master to deliver the report referred to in subsection (1) electronically by such means, and at such time before the arrival of the ship in Bermuda, as the Collector may specify.

[section 6 subsection (1) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; subsection (1) amended, and (2) substituted, by 2007:13 s.6 effective 29 March 2007]

Entry outwards

Advance delivery of outward passenger and crew manifest

6A (1) Subject to section 6B, the master of every ship departing from Bermuda shall, before the ship leaves Bermuda, deliver by electronic means to a customs officer a manifest setting out the following information in respect to every person on board the ship—

- (a) first and last names;
 - (b) sex, date of birth and nationality; and
 - (c) passport number, country of issue and date of expiry of passport.
- (2) The manifest shall show separately—
- (a) the names and particulars of the passengers on board the ship;
 - (b) the names of the passengers whose journey is to be completed in Bermuda;
 - (c) the names and particulars of the members of the crew of the ship; and
 - (d) the names and particulars of any other persons on board the ship (including persons rescued at sea and stowaways).
- (3) In the case of an aircraft, the duty to deliver the manifest may be discharged by an agent or representative of the aircraft on behalf of the commander.

[section 6A inserted by 2007:13 s.7 effective 29 March 2007]

Notices respecting manifests

6B (1) The Collector of Customs, by notice published in the Gazette, may prescribe

- (a) the categories of ships in respect of which section 6A(1) applies;
- (b) the electronic means by which and time within which manifests referred to in section 6A(1) must be delivered; and
- (c) any additional information to be included in manifests required to be delivered under section 6A(1), and the time within which and manner in which such manifests shall be delivered.

(2) The Collector of Customs may prescribe different times and manners of delivery and different information to be included in a manifest for different means of transport or for different categories of ships, crew or passengers.

[section 6B inserted by 2007:13 s.7 effective 29 March 2007]

Failure to deliver manifest

6C (1) A master or commander who fails to deliver a manifest as required by section 6A(1), or who delivers a manifest containing information that he knows or ought to know is false, shall forfeit a sum in the level 4 amount.

(2) An agent or representative who delivers a manifest on behalf of the commander, but fails to do so as required by section 6A(1), or who delivers a manifest containing

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information that the agent or representative knows or ought to know is false, shall forfeit a sum in the level 4 amount.

[section 6C inserted by 2007:13 s.7 effective 29 March 2007]

Entry outwards

7 (1) The master of every ship bound from Bermuda shall, before the ship departs, make, subscribe, declare to, and deliver to the Collector of Customs, or other proper officer, an entry outwards under his hand, of the destination of such ship, stating her name, country and tonnage, and if British, the port of registry, the name and country of the master, the country of the owner, the number of the crew, and how many are of the country of such ship; and if any ship departs before such entry is made, then the master of such ship shall forfeit the level 3 amount; and the master or owner of every ship in which any goods are exported shall within four days after the final clearance of such ship by himself or his agent deliver to the Collector of Customs, or other proper officer, a manifest of all goods shipped, with the number and description of the packages and the value of such goods at the time of shipment, and such other information concerning such goods as the Collector of Customs or other proper officer may require, and shall make and subscribe a declaration that such manifest contains a true account of all the cargo of such ship, unless a specification comprising all the particulars hereinbefore required to be given has been delivered to the Collector of Customs, or other proper officer, with a like declaration that the same contains a true account of the whole cargo of the ship.

(2) The master, owner or agent acting herein and subscribing the declaration, on failure to comply with any of the foregoing requirements relating to the delivery and verification of any specification or manifest, or otherwise incident thereto, shall for every offence forfeit the level 1 amount, and if the master, owner or agent delivers a false manifest, he shall forfeit the level 4 amount.

(3) Subject to subsection (4), the master of every ship bound from Bermuda, whether in ballast or laden, shall before departure come before the Collector of Customs, or other proper officer, and shall answer all such questions concerning the ship and cargo, if any, and the crew and the voyage, as may be demanded of him by such officer, and thereupon the Collector of Customs, or other proper officer, if the ship is laden, shall make out and give to the master a certificate of clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, if the specification or manifest hereinbefore referred to has been delivered to him, or a certificate of clearance in ballast, as the case may be; and if the ship departs without such clearance or if the master does not truly answer the questions demanded of him, then the master shall forfeit the level 4 amount.

(4) Notwithstanding anything in subsection (3), the Collector of Customs, or other proper officer, may withhold the certificate of clearance mentioned in subsection (3) if he is not satisfied in respect of any of the following matters:

- (a) that the ship is provided with officers duly certified in accordance with section 92 of the Act of the Parliament of the United Kingdom entitled the Merchant Shipping Act 1894;

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- (b) that all light tolls in respect of the ship have been paid in accordance with sections 25 and 26 of the Marine Board Act 1962 [*title 22 item 3*];
 - (c) that all pilotage dues in respect of the ship have been paid in accordance with sections 63 to 69 of the Marine Board Act 1962 [*title 22 item 3*]; or
 - (d) that the master of the ship has complied with this Act.
- (5) Notwithstanding anything in subsection (1), in the case of an aircraft departing or about to depart from Bermuda—
- (a) any agent or representative of the aircraft may make, subscribe, declare to and deliver an entry outwards under his hand; and
 - (b) it shall not be necessary to give to the commander of the aircraft a certificate of clearance.
- (6) The entry outwards called for by subsection (1) shall, in the case of pleasure craft, be delivered to the Collector of Customs at the designated yacht reporting centre.
- (7) The master of any departing ship which leaves any wharf or mooring for the purpose of any rendezvous—
- (a) with any ship on a voyage starting outside of Bermuda; or
 - (b) with any other ship making such rendezvous,
- shall make such simplified entry outwards as the Collector of Customs may require by notice published in the Gazette; and if any such departing ship leaves before such entry is made, then the master of such departing ship shall forfeit the level 3 amount.
- (8) It shall be an offence for any person, unless being in receipt of authorisation from the Collector of Customs, to—
- (a) greet a ship arriving in Bermuda; or
 - (b) greet a boat that has greeted a ship arriving in Bermuda.
- (9) Any person who greets a ship, in contravention of subsection (8), shall be guilty of an offence and liable on conviction on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of the level 7 amount or to both such imprisonment and fine.
- (10) In this section, “greet” means the approach to any ship, within a distance of 50 feet or less, without lawful excuse, on a voyage starting outside of Bermuda or any ship which leaves any wharf or mooring, by any—
- (a) person; or
 - (b) vessel.

[section 7 subsections (1)-(3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; subsections (7)-(10) inserted by 2012 : 16 s. 6 effective 1 June 2012]

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Produce of Bermuda; certificate of clearance and entry outwards to correspond

8 No goods shall be stated in the certificate of clearance of any ship from Bermuda, to be the produce of Bermuda, unless such goods have been expressly stated so to be in the entry outward of the goods.

Entry of goods

Prohibition on unloading prior to making of entry and grant of warrant

9 (1) No goods shall, except as in or under this Act is otherwise provided, be unladed from any ship in Bermuda, until due entry has been made of such goods, and a warrant has been granted for the unlading of the goods; and no goods shall be so unladed except in the presence or with the permission in writing of the proper officer; and any person who unloads any goods in contravention of this Act commits an offence.

(2) If any person unloads any goods, without warrant, the person unloading the goods shall forfeit and pay a sum in the level 4 amount.

(3) Any person who wilfully unloads any goods, without warrant, shall be guilty of an offence and liable on conviction on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of the level 7 amount or to both such imprisonment and fine.

(4) In addition to any penalty under subsection (2) or (3), if any person unloads any goods without warrant, those goods shall be liable to forfeiture.

[Section 9 repealed and replaced by 2012 : 16 s. 7 effective 1 June 2012]

Immediate unloading of explosives

10 (1) The master of any ship arriving at Bermuda may, immediately on the arrival of such ship, unload any explosives which he may have on board such ship:

Provided that—

- (a) bulk shall not otherwise be broken; and
- (b) no such explosives shall be unloaded or removed from the ship except in the presence of a customs officer; and
- (c) the master of the ship shall enter such explosives immediately after the explosives have been unladed (if not before entered).

(2) Nothing in this section shall derogate from or abridge any statutory provisions relating to explosives, and no such entry as aforesaid shall, for the purposes of this section, be treated as being duly completed until the requirements of such statutory provisions have been duly complied with.

Goods landed from mail ships before entry of goods

11 (1) The master of any ship carrying mails may at any time after making due entry of his ship with the Collector of Customs, or Assistant Collector of Customs, discharge any cargo and goods consigned to persons in Bermuda, and such goods and the importers thereof shall be subject to the following provisions—

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- (a) whenever any such goods are landed before entry thereof and payment of duty thereon they shall be secured by the proper officer in a Queen's Warehouse, or other place of security to be approved by the Collector of Customs, or Assistant Collector of Customs, and there kept in custody of the proper officer until due entry thereof and the payment of all duty thereon and all charges for removal, warehousing or storing of the goods (if any) incurred by the Department:

Provided that, with the permission of the Collector of Customs, or Assistant Collector of Customs, a customs officer may deliver such goods to the owner or consignee before entry thereof;

- (b) every importer or consignee, or other person to whom any such goods are delivered before entry of the goods and the payment of the duties thereon—
 - (i) shall make due entry thereof and pay all duties thereon; or
 - (ii) shall make such deposits as may be required under section 18, within five days after the entry of the importing ship; and any such person shall, in default thereof, forfeit such sum not exceeding the level 4 amount as the Collector of Customs may determine, and shall in addition, if the default continues after such determination as aforesaid has been notified to him in writing by or on behalf of the Collector of Customs, forfeit an additional sum not exceeding the level 3 amount, as the Collector of Customs may determine, in respect of each week during which such default continues after such notification;
- (c) if any such goods, being of a perishable nature, are not cleared forthwith, or not being of a perishable nature are not cleared, and all charges of duty, removal, warehouse rent and storage are not paid, within thirty days after the entry of the importing ship, then such goods may be sold, and the produce thereof paid in discharge of duties and charges, and the overplus (if any) to the proprietor of the goods on his application therefor;
- (d) if at any time the Collector of Customs, or the Assistant Collector of Customs, has occasion to collect or enforce the duties on any goods which have been imported, but not duly entered within the time allowed by law for that purpose, he shall value such goods for all purposes of duty in accordance with section 24 and the Second Schedule to this Act, and the value so fixed shall be deemed to be for all purposes of duty the true value of such goods until the contrary is shown by the importer or proprietor thereof to the satisfaction of the Collector of Customs, or Assistant Collector of Customs.

(2) Nothing in subsection (1) affect the licensing or use of any sufferance warehouse under the Sufferance Warehouse Acts, or sanction any charges for removal to or storage in any sufferance warehouse for the convenience of the importing ship.

[section 11 subsection (1)(b) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

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Early unloading of goods

12 (1) Notwithstanding anything contained in this Act the master of any ship to which, from special circumstances, unusual despatch is necessary, may with the permission of the Collector of Customs, or the Assistant Collector of Customs, proceed to discharge her cargo, (not being goods prohibited to be imported) in the presence and under the direction of the proper officer before entry of his ship made in accordance with this Act at any time by day or by night, not being a Sunday, and all goods so unladen shall remain in the custody of the proper officer until such ship and her cargo shall be duly entered:

Provided that the master of such ship shall as early as practicable, and within one hour after the first opening of the Collector of Customs' or Assistant Collector of Customs' office, next after commencing to discharge, make due entry of his ship and cargo in the manner required by this Act, in default whereof he shall forfeit the level 4 amount.

(2) Nothing in this section shall affect any provision of this Act relating to goods landed from any wrecked or stranded ship, or any ship in distress.

[section 12 subsection (1) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Cable ships

13 Whenever any ship arrives in Bermuda for the purpose of, or engaged in, the laying, landing, repairing, removal or renewal, of any electric cable, or in the performance of any necessary work in or about or in connection with, such service, and from the nature of the service or other circumstances, it is impracticable to delay the work until due entry of the ship and cargo has been made, and permits granted therefor, in the manner required by this Act, then the master of such ship may at any time, by day or by night, before making entry of his ship or cargo in the manner required by this Act, pay out, discharge, lay and land such cable, and perform any act and do anything necessary for such purpose, or for taking up, repairing, renewing, removing, securing or relaying, any such cable or for landing and securing the cable on shore, the consent of the Collector of Customs having first been obtained, and it shall be the duty of the master of a ship who avails himself of the facilities granted by this Act, as soon as practicable after his arrival in Bermuda, and, in the event of its being impracticable to enter his ship and cargo before laying, discharging, landing, renewing, repairing, removing, or replacing, any such cable, as soon as practicable after the performance of such service, to make due entry of his ship and her cargo in the manner prescribed by this Act, together with a declaration of the quantity and particulars of any cable or other things discharged or landed from his ship before entry made thereof and to furnish any further information concerning the same, in writing if so required, and verified by the oath or affirmation of the master if required, which the Collector of Customs, or Assistant Collector of Customs, may require of him, and also to pay all duties, if any, payable in respect of the same within seventy-two hours at the most, after his arrival in Bermuda; and every master of such ship who makes default in the performance of any duty imposed on him by this Act shall forfeit the level 4 amount:

Provided that the privileges granted by this section shall apply only to ships employed in the service of a company or companies, or a person or persons, engaged in

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laying, landing, repairing, maintaining, replacing or renewing such cable under contract with, or with the permission of, Her Majesty's Government.

[section 13 subsection (1) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Entry of goods by importer

14 (1) Upon the entry of any goods the importer, his agent or the consignee of the goods, as the case may be, shall at the time of entering the goods produce, subscribe, declare to and deliver to the Collector of Customs, or Assistant Collector of Customs, or other proper officer, whose duty it is to require them, a customs declaration in such form as the Collector of Customs may prescribe pursuant to section 16.

(1A) Such declaration shall be accompanied with invoices, bills of lading and such other documents relating to the goods as the Collector of Customs may require.

(2) If any such importer or agent neglects or refuses to produce any such document on being required to do so he commits an offence against this Act:

Punishment on summary conviction: a fine of the level 2 amount.

(3) *[Repealed by 1973:30]*

(4) Nothing in subsection (1) or (1A) shall be construed or have effect so as to prohibit an importer from making entry of any goods prior to the arrival in Bermuda of the ship in which the goods are carried; but where an importer applies to make prior entry as aforesaid, the following provisions shall have effect—

- (a) it shall be in the discretion of the Collector of Customs whether or not to permit such prior entry of such goods;
- (b) the importer shall produce to the proper officer the invoices and such other documents relating to the goods as the officer may require;
- (c) where the value of such goods is expressed in a currency other than a currency which is for the time being legal tender in Bermuda, the conversion of such value for the purpose of calculating the duty (if any) falling to be paid in respect of the importation of the goods shall be at the rate of exchange determined in accordance with section 24 and the Second Schedule to this Act.

[section 14(1) and (1A) substituted for subsection (1), and subsection (4) amended, by 2000:30 s.4 effective 8 November 2000; subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 and subsection (4)(c) substituted by 2004:6 s.4 effective 26 March 2004]

Payment of duty; keeping and inspection of books

15 (1) *repealed by 2000:30*

(2) Upon the entry of any goods, the person making such entry shall at the time of making the entry pay all duties due upon the goods which are payable immediately, and give security for all duties payable at any future time, and the Collector of Customs, or other

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proper officer, shall thereupon grant his warrant for the unlading of any such goods that are unladable.

(3) The duties upon all goods imported shall be deemed to be payable immediately upon the importation thereof unless otherwise expressly provided by this Act or any other Act.

(4) The customs officers at Hamilton and St. George's respectively shall preserve for reference all customs declarations which come into their possession, and shall keep a book (to be supplied at the public expense) similar in form and size to the "Import Book" kept by the Collector of Customs, in which they shall regularly enter, under appropriate heads, the name of the ship in which the goods have been imported, the name of the importer of such goods, and the amount of duty paid thereon, as set forth in such customs declarations.

(5) The books so kept by such customs officers respectively, shall, if called for, be laid before the Governor, the Senate, and the House of Assembly, or either of them, or before any committee of either branch of the Legislature as well during the recess as during the sitting thereof, whenever such committee is engaged in examining and checking the accounts of the public revenue kept by the Collector of Customs and Assistant Collector of Customs.

[section 15(1) repealed, and subsections (2), (3) and (4) amended, by 2000:30 s.5 & Sch effective 8 November 2000; subsection (2) amended by 2007:13 s.8 effective 29 March 2007]

Customs declarations

16 (1) The Collector of Customs, or other proper officer, may require any person entering, importing or exporting goods, currency or negotiable instruments or arriving at or leaving Bermuda to make a customs declaration prescribed under subsection (2) or (3).

(2) The Collector of Customs, by notice published in the Gazette, may prescribe the contents of, and particulars to be included in, customs declarations, including—

- (a) the form of customs declarations;
- (b) the time and manner of making customs declarations; and
- (c) the documents that must accompany a customs declaration.

(3) The Collector of Customs, by notice published in the Gazette, may prescribe different customs declarations—

- (a) for different categories of persons;
- (b) for different purposes; or
- (c) in respect of different categories of goods, currency or negotiable instruments or means of transport.

(4) The Collector of Customs or the Assistant Collector of Customs may return to the party presenting it any customs declaration in which several articles of import are described, but opposite to which the aggregate value of the same is alone inserted, and may

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require the party to produce other customs declarations which must particularly specify the respective values of the goods imported.

(5) If any person makes a false customs declaration, or fails to make a customs declaration, in respect of any goods, currency or negotiable instruments, the goods, currency or negotiable instruments shall be liable to forfeiture.

[section 16(1) substituted, and subsections (3) and (4) amended, by 2000:30 s.6 & Sch effective 8 November 2000; section 16 repealed and replaced by 2006:5 s.6(2) effective 1 April 2006; amended by 2008:14 s.4 effective 25 March 2008]

17 *[section 17 amended by 2000:30 effective 8 November 2000; and repealed by 2007:13 s.9 effective 29 March 2007]*

Packages with unknown contents

18 (1) If the importer of any goods has not at the time of their importation sufficient information as to the contents of the packages or parcels to enable him to make proper entry of the goods, the Collector of Customs, or other proper officer, may, if the conditions hereinafter mentioned are fulfilled, and if he thinks fit, release the goods before entry and payment of duty.

(2) The conditions referred to in subsection (1) are as follows—

- (a) the importer must make and sign and deliver to the Collector of Customs, or other proper officer, a written declaration, in such form as the Collector of Customs may approve, declaring that he has not sufficient information as to the contents of the packages or parcels to enable him to make proper entry of the goods;
- (b) the importer must deposit with the Collector of Customs, or other proper officer, such sum of money as the Collector of Customs, or other proper officer, considers sufficient for the purpose of safeguarding the revenue.

(3) A declaration such as is referred to in subsection (2) shall imply an undertaking on the part of the importer to obtain and produce to the Collector of Customs, or other proper officer, as soon as practicable the requisite documents and other information, if any, relating to the goods.

(4) Where any goods are released under the foregoing provisions of this section, the importer shall, within ten days after the date of such release, or within such longer period as the Collector of Customs may allow, make proper entry of such goods and shall, within such period, pay all duties thereon; and, if the importer does not within thirty days after the date of such release, or within such longer period after the date of release as the Collector of Customs may, on the application of the importer, by notice in writing allow, duly comply with the foregoing provisions of this subsection with respect to the entry of the goods, and to the payment of duties, then the importer shall pay into the Consolidated Fund a surcharge in respect of the importation of the goods; and any such surcharge shall be calculated at the rate of fifty per centum of the duty otherwise falling to be paid in respect of such goods, or, where proper entry has not been made in respect of such goods, then at the rate of fifty per centum of the deposit made under subsection (1).

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(5) Where goods are brought or are expected to be brought to Bermuda by aircraft, consigned to a particular importer, the Collector of Customs, or other proper officer, in administering the foregoing provisions of this section, may, if he thinks fit, allow the importer to deposit such sum of money as the Collector of Customs, or other proper officer, considers sufficient for the purpose of safeguarding the revenue in respect of any goods so brought or expected to be brought, whether by a particular aircraft or by different aircraft arriving at different times in Bermuda.

(6) Any sum of money deposited in pursuance of this section may, subject as hereinafter provided, be paid into the general revenue of Bermuda unless within six months after the date of the deposit proper entry is made of the goods to which the deposit relates and all duties are paid thereon:

Provided that where a sum of money deposited as provided in subsection (5) is such as to relate to several consignments of goods brought to Bermuda by aircraft and proper entry is made and all duties are paid with respect to certain of the consignments but not with respect to others, then only such part of the sum deposited may be paid into the general revenue under this subsection as may reasonably be apportioned to the consignments with respect to which proper entry has not been made.

[section 18 subsection (1) amended by 2007:13 s.10 effective 29 March 2007]

Importer's entry to be made within three days; power to refuse delivery

19 (1) The importer of any goods shall, except as otherwise provided, within three days after their importation, make due entry inwards of such goods; and in default of such entry the proper officer may convey such goods to a Queen's Warehouse, and if the duties thereon, together with all charges of removal and warehouse rent are not paid within 30 days after such three days have expired, the goods shall be treated as abandoned to the government and may be disposed of as the Collector of Customs sees fit.

(2) The Collector of Customs may refuse delivery of any goods (even though they may have been entered) of any importer who has failed, within thirty days of the delivery to him of goods previously imported by him, to enter and pay any duty or other charges on all such previously imported goods; and any goods so refused delivery may be held in a Queen's Warehouse at the importer's expense until he enters and pays all duty and other charges on all such previously imported goods.

[section 19 subsection (1) amended by 2007:13 s.11 effective 29 March 2007; Section 19 subsection (1) amended by 2012 : 3 s. 3 effective 1 June 2012; subsection (1) amended by 2012 : 16 s. 3 effective 1 June 2012]

20 *[section 20 amended by 2000:30 effective 8 November 2000; and repealed by 2007:13 s.12 effective 29 March 2007]*

Particulars in customs declaration and landing warrant to correspond with those in ship's report

21 No customs declaration, nor any warrant for the landing of any goods, or for the taking of any goods out of any warehouse, shall be deemed valid unless the particulars of the goods and packages in such declaration correspond with the particulars of the goods

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and packages purporting to be the same in the report of the ship, or in the certificate or other document, where any is required by which the importation or entry of such goods is authorized, nor unless the goods have been properly described in such declaration, by the denominations and with the characters and circumstances according to which such goods are charged with duty or may be imported; and any goods taken or delivered out of any ship, or out of any warehouse, by virtue of any customs declaration or warrant not corresponding or agreeing in all such respects, or not properly describing the same, shall be deemed to be goods landed or taken without due entry thereof, and shall be forfeited:

Provided that whenever any goods have been repacked under the authority of the proper officer, the entry outwards of such goods shall be made to correspond in description with the packages into which such goods have been repacked.

[section 21 amended by 2000:30 Sch effective 8 November 2000]

Validity of landing warrants

22 No customs declaration or warrant for the landing of any goods shall be deemed valid unless made in accordance with this Act.

[section 22 amended by 2000:30 Sch effective 8 November 2000]

Goods in quarantine; time of entry to count from date of release

23 If any goods are liable to the performance of quarantine, then the time for entry and landing of the goods shall be computed from the time at which they have been released from quarantine.

[section 23 amended by 2007:13 s.13 effective 29 March 2007]

Ascertainment of value of goods for purposes of duty

24 (1) Subject to any other Act, where the duties payable on any goods imported into Bermuda, or taken out of bond from any bonded warehouse, are charged according to the value thereof, then such value ("the customs value") shall, subject to subsections (3) and (4), be ascertained in accordance with the Second Schedule.

(2) The Collector of Customs may require the importer of any goods to which subsection (1) applies, or, as the case may be, the person proposing to take such goods out of bond from any bonded warehouse, to submit to him any documents which he may reasonably require for verifying the value of the goods for the purposes of subsection (1); and if such documents are not duly produced to the Collector of Customs, the Collector of Customs may refuse to enter the goods or, as the case may be, may refuse to allow the goods to be taken out of bond from the bonded warehouse.

(3) In subsection (1), the reference to duties payable on goods imported into Bermuda includes a reference to duties payable on goods removed from any sufferance warehouse.

(4) The Minister may make regulations with respect to customs value, derogating from or in addition to the Second Schedule as may be deemed necessary for the protection of revenue in Bermuda.

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(5) *[repealed]*

(6) *[repealed]*

[section 24 subsections (1), (3) and (4) substituted, (5) and (6) repealed, by 2004:6 s.5 effective 26 March 2004; amended by 2007:13 effective 29 March 2007]

Remuneration to appraisers

25 *[Repealed by 2004:6]*

[section 25 repealed by 2004:6 s.6 effective 26 March 2004]

Sale of goods seized for duty; application of proceeds

26 (1) If the importer of any goods refuses to pay the duty thereon the Collector of Customs, or other proper officer, shall take and secure the goods with the casks or other packages thereof and shall cause the goods to be publicly sold within the space of twenty days at the most after such refusal, and at such time and place as such officer may, by four or more days' public notice appoint for that purpose, which articles shall be sold to the best bidder.

(2) The money arising from any such sale shall be applied in the first place in payment of such duty, together with the charges occasioned by the sale, and the overplus (if any) shall be paid to such importer or proprietor, or any other person authorized to receive the same, and in case such goods or any part thereof do not sell they shall be destroyed or otherwise disposed of as the Minister may sanction or direct.

Commercial travellers samples

27 *[Repealed by 2014 : 16 s. 9.]*

[Section 27 repealed by 2014 : 16 s. 9 effective 1 April 2014]

Quarterly tables of imports and exports

28 The Collector of Customs and Assistant Collector of Customs shall, at the expiration of every quarter, enter in a book to be kept for that purpose a tabular statement of the principal articles of imports and exports, distinguishing the kind, quantity, value, and amount of duty of such principal articles respectively, and such book shall be kept for public reference.

29 *[section 29 repealed by 2007:13 s.14 effective 29 March 2007]*

Fixing of times of importation and of exportation

30 If for the purpose of revenue, or drawback, or of any charge on shipping, or for any purpose under this Act, it becomes necessary to determine the precise time at which an importation or exportation of any goods shall be deemed to have had effect, such time in respect of importation shall be deemed to be the time at which the goods arrive at any anchorage, mooring or port in Bermuda, or if they arrive at another place the time at which they are landed in that place; and such time in respect of exportation shall be deemed to

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be the time of the last clearance of such ship at the proper office for the voyage upon which she had departed.

[section 30 amended by 2007:13 s.15 effective 29 March 2007]

Determination of time for the importation and exportation of restricted or prohibited goods

30A (1) Notwithstanding section 30, in this Act and in any other statutory provision, unless the context otherwise requires—

- (a) the time of importation of any prohibited goods is the time when the goods enter Bermuda;
- (b) the time of importation of any restricted goods is the time when the goods are unloaded from the aircraft or vessel in which they are imported into Bermuda;
- (c) the time of importation of any restricted goods not carried into Bermuda in an aircraft or vessel shall be the time when such goods enter Bermuda; and
- (d) the time of exportation of both prohibited and restricted goods shall be the time when the goods are loaded onto a vessel or aircraft, or the time when the goods leave Bermuda, whichever time is earlier.

(2) In this section—

“prohibited goods” means goods of a class or description of which the importation, exportation or carriage coastwise is prohibited in any enactment;

“restricted goods” means goods of a class or description of which the importation, exportation or carriage coastwise is restricted in any enactment.

[Section 30A inserted by 2008:14 s.7 effective 25 March 2008; Section 30A amended by 2012 : 3 s. 4 effective 1 June 2012]

Purchase of locks, gauges

31 All locks, gauges, tests and other implements and things required for the due discharge of the duties of the Department shall be purchased by the Collector of Customs under the authority of the Minister.

Duty of agent making application to produce authority

32 Whenever any person makes application to any customs officer to transact any business on behalf of any other person, the customs officer may require the person so appointed 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.

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Sampling of goods for examination

33 The respective customs officers may on the entry of any goods, or at any time afterwards, take samples of such goods for examination, or for ascertaining the duties payable on such goods, or for such other purposes as they may deem necessary, and such samples shall be disposed of and accounted for as the Collector of Customs, or Assistant Collector of Customs, may direct.

Power of customs officer to refuse to deliver goods before payment of freight

34 (1) Any customs officer having the custody of any goods which have come into his hands under this Act may refuse delivery thereof from the Queen's Warehouse, or other place of deposit, until proof has been given to his satisfaction that the freight due upon such goods has been paid.

(2) Whenever any goods are sold under this Act for default of payment of duties or charges, the proceeds thereof shall be paid first in discharge of duties and of any charges of freight, warehousing, or storage, while under charge of the Department, and afterwards of the freight (if any) due to the importing ship.

Wrecked or stranded vessels

35 (1) In the case of shipwreck or other casualty the unloading or landing of any goods before reporting the same to the proper officer shall not be construed to render such goods, or the boats, ships or vehicles, horses or cattle employed or concerned in removing or unloading them or any of them liable to forfeiture, or any person aiding, assisting or concerned in the same liable to any penalty, if such goods are landed in the presence of a customs officer on duty, or, if that is not practicable, are deposited and secured within twelve hours after being landed in a house, room or building sanctioned by a customs officer for that purpose, but if any goods which, from shipwreck or other casualty are unladen or taken ashore before being reported to the proper officer, are neither landed in the presence of a customs officer on duty, nor (in cases where that may not be practicable) deposited and secured within twelve hours after being landed in a house, room or building sanctioned by the proper officer for that purpose, the same shall be liable to seizure and forfeiture and to be in all respects dealt with as goods illegally landed or unladen.

(2) All ships' boats, vehicles and carriages, and an horses and cattle made use of in the removal, unloading or landing of any such goods shall be liable to forfeiture.

(3) Every person who assists or is in any way concerned in the unshipping, unloading, landing or removal or in the harbouring of any goods made liable to forfeiture under this section, or into whose land or possession the goods or any part thereof shall knowingly come, shall forfeit and pay treble the value thereof:

Provided that if any such goods happen not to be seized by any customs officer then in every such case instead of treble the value every such person shall forfeit and pay the level 4 amount.

(4) In every case of goods being landed before being reported at the proper office it shall be the duty of the consignee or agent of the ship, and also of the master of the ship and of the person in actual charge or possession of any such goods, duly to report the goods within twenty hours after the goods shall be landed and every person whose duty under

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this section it is to report any such goods who makes default therein shall forfeit and pay the level 4 amount.

(5) Nothing in this section shall be construed so as to alter an affect section 10.

[section 35 subsections (3) and (4) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

PART IIA SIMPLIFIED CUSTOMS PROCEDURES

[Part IIA inserted by 2000:30 effective 8 November 2000 and repealed and replaced by 2006:5 effective 1 April 2006]

Simplified procedures

35A (1) The Collector of Customs may establish simplified procedures in relation to goods and merchandise imported into or exported from Bermuda by modifying the application of sections 3A to 8, 9, 14, 15, 16, 19, 57 and 65 in such manner as he considers appropriate.

(2) The following persons are authorized to use the simplified procedures—

- (a) any person whose application is granted by the Collector of Customs under section 35C;
- (b) any person who is within a category of persons designated by the Collector of Customs, by notice published in the Gazette.

[section 35A inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006; subsection (1) amended by 2007:13 s.16 effective 29 March 2007; Section 35A subsection (1) amended by 2012 : 3 s. 5 effective 1 June 2012]

Application to use simplified procedures

35B (1) Any person who wishes to avail himself of simplified procedures may make an application to the Collector of Customs in such manner as he may direct.

(2) The application shall be accompanied with such documents, reports and information as the Collector of Customs may reasonably require for the purpose of determining the application.

[section 35B inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006]

Grant and refusal of applications

35C (1) Subject to section 35D, the Collector of Customs may grant or refuse an application to use simplified procedures.

(2) Where the Collector of Customs authorizes the use of simplified procedures, he may make the authorization subject to such conditions as he considers appropriate for protecting the revenue.

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(3) The Collector of Customs may, of his own motion, or on the application of an authorised person, vary or withdraw any condition imposed under subsection (2).

[section 35C inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006]

Applications by persons carrying on a trade or business

35D (1) The Collector of Customs shall not grant an application made by a person carrying on a trade or business which consists of any of the activities set out in paragraphs 1(1)(a) to (e) of the First Schedule unless he is satisfied that the applicant—

- (a) is a fit and proper person to be authorised to use simplified procedures;
- (b) has satisfactory electronic or other systems in place that will enable him to submit by such means all documents and information required under this Act to be submitted to the Collector of Customs; and
- (c) has satisfactory record-keeping systems and controls in place.

(2) It shall be a condition of every authorisation granted under this Part to a person carrying on a trade or business described in subsection (1) that the authorised person shall at all times fulfil the criteria set out in paragraphs (a) to (c) of that subsection.

[section 35D inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006]

Penalty

35E Any authorized person who fails to comply with a condition imposed in an authorization shall forfeit a penalty of the level 4 amount.

[section 35E inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006]

Revocation of authorisation

35F (1) The Collector of Customs may revoke any authorisation granted under this Part if he is satisfied that—

- (a) the authorised person has failed to comply with a condition of the authorisation;
- (b) it is appropriate to do so in the interests of the revenue; or
- (c) the authorisation is no longer required.

(2) The Collector of Customs may revoke an authorization issued to a person carrying on a trade or business described in section 35D if the criteria specified in paragraphs (a) to (c) of section 35D(1)—

- (a) are not or have not been fulfilled; or
- (b) may not be or may not have been fulfilled.

(3) The Collector of Customs shall serve an authorised person with a notice in writing of the revocation, which shall have effect from the date of the notice.

[section 35F inserted by 2000:30 s.7 effective 8 November 2000; repealed and replaced by 2006:5 s.6(3) effective 1 April 2006; amended by 2008:14 s.8 effective 25 March 2008]

PART III
CUSTOMS AREAS AND EXCISE LICENCES

Customs areas

Appointment of customs areas

36 (1) The Collector may after consultation with the relevant port authority, appoint any place in Bermuda to be a customs area by notice published in the Gazette.

(2) Any occupier of any place in Bermuda may apply to the Collector for the appointment of that place as a customs area.

(3) An application made under subsection (2) shall be in such form and shall be accompanied by such documents as the Collector may specify in writing.

(4) The application must satisfy the Collector that the occupier can—

- (a) provide the means of transport for goods held in a customs area or moved from one customs area to another customs area;
- (b) adopt means of identification of means of transport and consignments;
- (c) provide security for the duty and the goods;
- (d) keep records and ensure that such records accompany the goods as the Collector may require;
- (e) provide free of charge, adequate facilities for customs officers to inspect the means of transport and goods;
- (f) provide free of charge, office and other facilities for customs officers to carry out customs supervision and control; and
- (g) comply with any other conditions that the Collector considers necessary for protection of revenue and for the enforcement of any restriction or prohibition on the importation or exportation of goods.

(5) The Collector may for stated reasons grant or refuse an application to appoint a place as a customs area or may appoint a place as a customs area, subject to such conditions as he considers appropriate, for the protection of revenue.

(6) The Collector may for stated reasons—

- (a) revoke any appointment of a place as a customs area; or
- (b) vary any condition imposed under subsection (5),

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by notice published in the Gazette.

[Section 36 amended by 2007:13 effective 29 March 2007; Section 36 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Regulation of customs areas

37 (1) Every person in a customs area shall comply with the directions of a customs officer as to where he should go and where he should remain.

(2) Every person in charge or control of any means of transport in a customs area shall comply with the directions of a customs officer as to where that means of transport should be moved or remain.

(3) A customs officer, for the protection of revenue and for the enforcement of any restriction or prohibition on the importation or exportation of goods, may inspect any goods in a customs area and for the purpose of this inspection may direct any person in charge or control of—

- (a) any vehicle or equipment in a customs area, to facilitate the inspection of goods; or
- (b) any goods in a customs area, to move the goods to a place of inspection outside the customs area and take such steps as are necessary to facilitate the inspection and the return of the goods to the customs area, after inspection.

(4) A person who fails to comply with a direction of a customs officer under this section shall forfeit a penalty of the level 5 amount.

[Section 37 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Offence of unauthorised holding or movement of uncustomed goods within a customs area

38 (1) Any person, other than an authorised person, who carries, takes control of or moves uncustomed goods in a customs area shall forfeit a penalty of the level 4 amount.

(2) In this section, an authorised person means—

- (a) any customs area operator approved in respect of that customs area or any person acting under the authority of that customs area operator;
- (b) any passenger holding or moving his accompanied baggage or any person acting under the authority or permission of that passenger; or
- (c) any customs officer acting in the course of his duty or any person acting under his authority or permission.

[Section 38 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Approval of customs area operators

39 (1) Any occupier of any part of a customs area supplying goods or services to passengers, importers or exporters or otherwise concerned in the holding, movement or

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dealing in goods in a customs area shall apply to the Collector to be approved as a customs area operator in respect of the customs area of which he is an occupier.

(2) Any occupier of any part of a customs area who supplies goods or services to passengers, importers or exporters or deals with goods in a customs area, without the Collector's approval or permission shall forfeit a penalty of the level 4 amount.

(3) The manner in which an application under subsection (1) shall be made, including any time lines and any documents that must accompany an application shall be specified by the Collector in writing.

(4) The application under subsection (1) must satisfy the Collector that the proposed operator —

- (a) is suitable to be appointed as a customs area operator and has sufficient occupation of the customs area;
- (b) has satisfactory electronic and other systems that will enable him to provide any information required by the Collector;
- (c) has satisfactory systems to enable him to comply with the requirements under this Part and the First Schedule;
- (d) has resources and equipment that will enable him to comply with any conditions that may be imposed or any directions, regulations, notices, appointments or approvals given under this Part; and
- (e) can provide sufficient facilities for customs supervision and control, for protection of revenue and for the enforcement of any restriction or prohibition on the importation or exportation of goods.

(5) The Collector may by notice in writing, approve or refuse an application under subsection (1), or may approve an application subject to conditions set out in the notice, as he considers appropriate, for the protection of revenue and for the enforcement of any restriction or prohibition on the importation or exportation of goods.

(6) The Collector may for the protection of revenue or for the enforcement of any restriction or prohibition on the importation or exportation of goods, by notice in writing—

- (a) vary or revoke any approval of a person as a customs area operator; or
- (b) withdraw or vary any condition of approval imposed under subsection (5),

for failure to comply with any condition of approval.

(7) The Minister may by Order determine persons and entities that are to be exempted from the obligation to apply to be approved as customs area operators.

(8) An Order made under subsection (7), shall be subject to the affirmative resolution procedure.

[Section 39 substituted by 2012 : 3 s. 6 effective 1 June 2012]

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Regulation of customs area operators

40 The Collector, as a condition of approval shall require a customs area operator to—

- (a) provide secure premises and means of transport for the goods held in a customs area or moved from one customs area to another customs area;
- (b) adopt means of identification of means of transport and consignments;
- (c) hold limited kinds, quantities or values of goods;
- (d) provide security for the duty;
- (e) issue and keep records and ensure that such records accompany the goods as the Collector may require;
- (f) provide free of charge, adequate facilities for customs officers to inspect the means of transport and the goods;
- (g) provide free of charge, office and other facilities for customs officers to carry out customs supervision and control; and
- (h) comply with any other conditions that the Collector considers necessary, for the protection of revenue and for the enforcement of any restriction or prohibition on the importation or exportation of goods.

[Section 40(1) amended by 2000:30 Sch effective 8 November 2000; Section 40 amended by 2007:13 effective 29 March 2007; Section 40 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Holding of goods in customs areas and movement of goods between customs areas

41 (1) Notwithstanding any restrictions on removal of goods from ports, subject to the directions of the Collector, goods may be moved from one customs area to another customs area.

(2) Notwithstanding section 19(1), subject to the directions of the Collector, goods may be held in a customs area or may be moved from one customs area to another for a period not exceeding 30 days, before making entry of the goods.

(3) The period specified in subsection (2) shall begin on the day that the goods are unloaded from the vessel or aircraft and end on the day that the goods are re-exported, released for home use, or entered into a bonded warehouse upon a customs declaration.

(4) On removal of goods from a customs area of departure to a customs area of destination, and upon the arrival of such goods at the customs area of destination, the goods shall be entered and warehoused in the same manner, and they shall be subject to the same laws, as are required on the entry and warehousing of goods on first importation.

(5) The Collector may by notice published in the Gazette, give directions of a general nature or on a case-by-case basis, for carrying this section into effect.

[Section 41 substituted by 2012 : 3 s. 6 effective 1 June 2012]

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Removal of goods from a customs area

42 (1) Unless goods are being moved from one customs area to another customs area, import duty and export duty charged on the goods under the Customs Tariff Act 1970 shall be payable on removal of the relevant goods from a customs area and sections 9, 14, 15 & 16 shall apply.

(2) In case of an irregular removal of goods from a customs area, the customs area operator of that customs area and the importer or exporter of the goods shall be jointly and severally liable for the duty.

(3) In case of an irregular removal of goods during a customs transit movement the customs area operator of the customs area of departure and the importer or exporter of the goods shall be jointly and severally liable for the duty.

(4) An averment by the Collector in any process or proceedings for recovery of duty, that goods were removed unlawfully from a customs area or during customs transit, shall, until the contrary is proved, be sufficient evidence of the matter averred.

(5) In this section, "customs transit" means the movement of goods from one customs area to another customs area.

[Section 42 amended by 2007:13 effective 29 March 2007; Section 42 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Excise Licences

Excise licence fees

43 Subject to any necessary modifications, the provisions of this Act shall apply to excise licence fees as they apply to customs duties.

[Section 43 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; Section 43 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Customs area operator excise licence fee

44 Every customs area operator shall pay the annual excise licence fee prescribed under the Government Fees Regulations 1976.

[Section 44 substituted by 2012 : 3 s. 6 effective 1 June 2012]

Definitions for Part III

45 In this Part—

"equipment" includes non-intrusive inspection equipment which uses x-ray, ionscan or terahertz wave technology and motorised or unmotorised goods or cargo handling equipment like cranes, top loaders, forklifts, trucks, tractors and trailers;

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“occupier” means a person for the time being in possession of land or buildings in a customs area either as owner, tenant or licensee.

[Section 45 amended by 2007:13 effective 29 March 2007; Section 45 substituted by 2012 : 3 s. 6 effective 1 June 2012; Section 45 “occupier” amended by 2012 : 16 s. 4 effective 1 June 2012]

Forfeiture of goods landed or removed from commissioned ships in contravention of Act; penalties

46 *[Repealed by 2012 : 3 s. 6]*

[Section 46 repealed by 2012 : 3 s. 6 effective 1 June 2012]

Stores in Royal Naval establishments

47 *[Repealed by 2012 : 3 s. 6]*

[Section 47 repealed by 2012 : 3 s. 6 effective 1 June 2012]

Regulations respecting goods stored in Royal Naval establishments

48 *[Repealed by 2012 : 3 s. 6]*

[Section 48 repealed by 2012 : 3 s. 6 effective 1 June 2012]

Drawback on goods exported by, or supplied for, use out of Bermuda, to commissioned ships

49 *[Repealed by 2012 : 3 s. 6]*

[Section 49 repealed by 2012 : 3 s. 6 effective 1 June 2012]

PART IV

WAREHOUSING OF GOODS

LICENSING OF BONDED WAREHOUSES

Bonded warehouses; licences

50 (1) The Collector of Customs, upon application and payment of the prescribed fee by the owner or occupier of any premises, may, if the conditions hereinafter mentioned are fulfilled, grant to the applicant a licence under his hand authorizing the use of the premises as a bonded warehouse, that is to say, a warehouse for the storage of uncustomed goods in bond under this Act or any Act amending or replacing this Act.

(2) The conditions referred to in subsection (1) are as follows—

- (a) the applicant must satisfy the Collector of Customs that the premises in respect of which he applies for a licence are a proper and secure place for the warehousing of uncustomed goods in bond, and that adequate facilities are provided for keeping such goods entirely separate and apart from other goods, and that the premises are not so situated or of such a character as to make customs supervision difficult or inconvenient;

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- (b) the applicant must enter into a bond with two sureties to be approved by the Collector of Customs, he and they being jointly and severally bound thereby in the penal sum of \$2,400, and the conditions of the bond being—
 - (i) that no uncustomed goods be removed from the warehouse except in the presence of the proper officer;
 - (ii) that all uncustomed goods be kept entirely separate and apart from all other goods; and
 - (iii) that no change be made in such premises or in the means of access thereto or in the approaches thereto or in the method of securing such premises, except such change as the Collector of Customs may expressly approve in writing.

(3) A licence granted under this section shall specify the name of the owner or occupier of the licensed premises, their situation and measurements, and shall include a general description of the licensed premises.

(4) Where a licence has been granted under this section then so long as the licence remains in force the licensed premises shall be subject to all the provisions of this Act relating to bonded warehouses.

(5) Where it is shown to the satisfaction of the Collector of Customs that the premises in respect of which a licence under this section has been granted are no longer a proper place for use as a bonded warehouse or that the conditions of a bond entered into under this section are not being observed the Collector of Customs may revoke or cancel the licence.

[Section 50 amended by 1995:4 effective 22 December 1995; “premises” substituted for “building” and consequential grammatical changes made throughout by 2004:6 s.8 effective 26 March 2004; and by 2007:13 effective 29 March 2007]

Removal of goods from warehouse where licence cancelled

51 Whenever any licence granted under this Act or under any Act hereby repealed, is revoked or cancelled, the Collector of Customs, or Assistant Collector of Customs, shall cause all goods in the warehouse mentioned in such licence or certificate, on which the duties have not been paid, to be immediately removed therefrom to some other warehouse under the direction and in the presence of the proper officer or officers; and all expenses attending such removal shall be borne by the proprietor or lessee of the warehouse from which the goods have been so removed, and may be recovered from him, with costs, before a court of summary jurisdiction, or, if not so recovered, shall be defrayed out of the Consolidated Fund, and shall in such case be a first charge upon such goods.

Warehousing of goods

Duty suspended on goods while in warehouse

52 (1) The importer or consignee of any such goods may warehouse the goods in any warehouse without payment of any duty on the first entry thereof, subject nevertheless to this Act.

(2) [Repealed by 2013 : 39 s. 23.]

[Section 52 amended by 2011 : 5 s. 7 effective 1 April 2011; subsection (2) repealed by 2013 : 39 s. 23 effective 1 April 2014]

Warehouses and the arrangement of their contents under direction of Collector of Customs

53 All goods so warehoused shall be stowed in such parts or divisions of the warehouse, and in such manner, as the Collector of Customs or other proper officer, may direct; and the warehouse shall be locked and secured in such manner, and shall be opened and visited at such times, and under such rules and regulations, as the Collector of Customs, or other proper officer, may direct; and all such goods shall, after being landed upon importation, be carried to the warehouse, or shall after being taken out of the warehouse for exportation or for stores be carried to be shipped under such rules and regulations as the Collector of Customs may direct.

Importer may give bond

54 (1) Upon the entry of any goods to be warehoused, the importer of such goods, instead of paying down the duties due thereon, shall give bond with two sufficient sureties to be approved of by the Collector of Customs, or other proper officer, in treble the duties payable on such goods, with condition for the safe depositing of such goods in the warehouse mentioned in the customs declaration, and for the payment of all duties due upon such goods or for the exportation thereof, or shipment thereof as stores, according to the first account taken of such goods upon the landing of the goods, subject to the allowance hereinafter mentioned for evaporation of spirits and wine, and with a further condition that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty or upon due entry for exportation, or for shipment as stores, and with a further condition that the whole of such goods shall be so cleared from such warehouse, and the duties upon any deficiency of the quantity, according to such first account, subject as aforesaid, shall be paid within two years from the date of the first entry thereof, and if after such bond has been given the goods or any part thereof are sold or disposed of, so that the original bonder shall be no longer interested in, or have any control over the goods, then the Collector of Customs, or other proper officer, may admit fresh security to be given by the bond of the new proprietor or other person having control over such goods, with his sufficient sureties, and to cancel the bond given by the original bonder of such goods or to exonerate him to the extent of the fresh security so given.

(2) Any general importer of goods intending to import into Bermuda any goods to be warehoused on the importation thereof may, with the sanction of the Collector of Customs, or other proper officer, instead of complying with subsection (1) with respect to every such importation, give a general bond subject to power of the Collector of Customs to

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require such security for duty as he may consider necessary for the protection of the revenue, in a form to be approved by the Collector of Customs, or other proper officer, in such amount as the Collector of Customs, or other proper officer, may require, conditioned for the safe depositing of all such goods on importation in a bonded warehouse licensed under section 50, and for complying in all other respects with the provisions of subsection (1) with reference to the warehousing of bonded goods:

Provided that in the case of any gasoline, kerosene, fuel oil or diesel oil imported into and stored in bulk in Bermuda which the Collector of Customs is satisfied has been so imported and stored either wholly or partly for the purpose of sale thereof to any Government or person and which Government or person has by any Act been exempted from import duty in respect of the like importation by such Government or person, the importer may give the general bond without sureties.

(3) Every such general bond shall cover all goods imported and bonded by the person giving such bond, or exported in bond by such person, during a period of twelve months next after the date of such bond, and shall not be discharged until all such goods have been accounted for to the satisfaction of the Collector of Customs, nor until the full duties due upon any deficiency of such goods not so accounted for have been paid.

(4) No greater sum shall be recoverable under any such general bond than double the amount of the duties payable on the goods in respect of which a breach of such bond is made.

(5) Upon the entry outwards of any goods covered by any such general bond, the person giving such bond and his sureties shall be liable under such bond in an amount double the import duties on such goods, or, if such goods are prohibited to be imported for home use, in double the value of such goods, that the goods shall be landed at the place for which they have been entered outwards, or shall be otherwise accounted for to the satisfaction of the Collector of Customs.

[Section 54 amended by 2000:30 effective 8 November 2000; by 2007:13 effective 29 March 2007; subsection (2) amended by 2012 : 16 s. 8 effective 1 June 2012]

Allowance for evaporation of wine and spirits

55 (1) The Collector of Customs, or other proper officer, may make allowance for evaporation to the importers of rum and other spirits, and wines, which have been warehoused upon the landing of the same at and after the following rates, for every six months that the same shall be in the warehouse, that is to say—

- (a) for every puncheon of rum, one and a half gallon;
- (b) for every hogshead of rum, three-fourths of a gallon;
- (c) for every pipe of brandy or gin, one gallon;
- (d) for every hogshead of brandy or gin, one-half of a gallon;
- (e) for every pipe of wine, one and a half gallon;
- (f) for every pipe or hogshead of wine, three-quarters of a gallon; and
- (g) for every quarter pipe of wine, one-half of a gallon.

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(2) The allowances for evaporation mentioned in subsection (1) shall be deducted from the quantity or gauge of such rum and other spirits and wine first ascertained at the time the same was deposited in the warehouse whenever such rum and other spirits and wine is taken out of the warehouse; and the duties shall be paid on the quantity which appears after such allowances have been deducted, anything hereinbefore contained to the contrary notwithstanding:

Provided that in no case shall any allowance be made as is above mentioned for evaporation if such rum and other spirits and wine is taken out of the warehouse within six months of the date of the warehousing of the same.

Forfeiture of goods, if not warehoused after entry or taken out without entry

56 (1) If any goods which have been entered to be warehoused are not duly carried into and deposited in the warehouse, or are afterwards taken out of the warehouse without due entry and clearance, or having been entered and cleared for exportation, or for shipment as stores, from the warehouse, are not duly carried and shipped, or are afterwards re-landed except with the permission of the Collector of Customs, or other proper officer, then such goods shall be forfeited.

(2) If the strength of any spirits when taken out of the warehouse for exportation, or for shipment as stores, is found to be reduced below the strength of such spirits when first warehoused, more than may be reasonably allowed for a change of temperature while so warehoused, then such spirits shall be forfeited.

Precautions to be taken by customs officers in warehousing goods

57 (1) Upon the entry and landing of any goods to be warehoused, the proper officer shall take a particular account of the goods, and shall mark the contents on each package, and shall enter the same in a book to be kept for that purpose, and shall ascertain and mark on each package of spirits the strength of such spirits, and enter the same in such book.

(2) No goods which have been so warehoused shall be taken or delivered from the warehouse, except upon due entry and with the authority of the proper officers, for exportation or for stores, or upon due entry and payment of duty for home use.

(3) An account shall be made out of the quantity upon which the duties have been paid, and of the quantity exported, and of the quantity (to be then ascertained) of the goods still remaining in the warehouse (as the case may be) and of the strength of any spirits remaining in the warehouse; and if upon such account there appears in either case to be any deficiency of the original quantity, then the duty payable upon the amount of such deficiency shall then be paid.

(4) Upon the entry and landing of any malt liquor in casks to be warehoused, it shall be sufficient, instead of taking a particular account of the malt liquor at the time of landing, to make entry of the quantities contained in such casks as specified on the invoice thereof, or in the event of the quantities not being therein specified such quantities shall be ascertained or determined in such manner as the Collector of Customs, or Assistant Collector of Customs, may sanction; and when any such malt liquor in casks is entered to be cleared from any bonded warehouse for home consumption the duty payable thereon

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shall be calculated on the quantity as ascertained by measure at the time of the actual delivery thereof, unless there is reasonable ground to suppose that any portion of the deficiency or difference between the quantity entered on landing and that ascertained at the time of actual delivery has been caused by illegal or improper means, in which case the Collector of Customs, or Assistant Collector of Customs, shall make such allowance only for loss as he may consider fairly to have arisen from legitimate causes.

[section 57 amended by 2007:13 effective 29 March 2007]

Samples allowed by Collector of Customs to be taken out

58 The Collector of Customs, under such regulations as he may see fit, may permit moderate samples to be taken of any goods so warehoused, without entry, and without payment of duty, except as duty eventually becomes payable as on a deficiency of the original quantity.

Power of Collector of Customs to allow owners to sort, or repack goods in warehouse

59 The Collector of Customs, under such regulations as he may see fit, may allow the proprietor or other person having control over the goods so warehoused, to sort, separate, and pack and repack any such goods, and to make such lawful alterations therein, or arrangements and assortments thereof, as may be necessary for the preservation of such goods, or in order to the sale, shipment, or legal disposal of the same, and also to allow any parts of such goods so separated to be destroyed but without prejudice to the claim for duty upon the whole original quantity of such goods.

60 *[section 60 repealed by 2000:30 s.8 effective 8 November 2000]*

Security on entry outwards of goods in warehouse

61 Upon the entry outwards of any goods to be exported from the warehouse, the person entering the goods shall give security by bond in treble the duties of importation on the quantity of such goods, or, if such goods are prohibited to be imported for home use, in double the value of such goods, with two sufficient sureties, to be approved by the Collector of Customs, or other proper officer, that the goods shall be landed at the place for which they are entered outwards, or be otherwise accounted for to the satisfaction of the Collector of Customs.

62 *[section 62 repealed by 2007:13 s.17 effective 29 March 2007]*

63 *[section 63 repealed by 2007:13 s.17 effective 29 March 2007]*

Penalties on keepers of warehouse for not keeping uncustomed goods separate from duty paid goods or for allowing removal of uncustomed goods

64 Whenever the owner or occupier of any warehouse refuses or neglects to keep all goods in his warehouse on which duty has not been paid entirely distinct and apart from all other goods in such manner as may be required by the Collector of Customs, or Assistant Collector of Customs, and whenever any goods on which duty has not been paid are removed from any warehouse without authority from the proper officer, or without due entry and payment of all duties thereon if for home consumption, or due entry for exportation,

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having first been made in accordance with the requirements of this Act, the owner or occupier of such warehouse shall forfeit the level 3 amount, and for a second offence shall be liable, in addition to such penalty, to have the licence granted under this Act, cancelled or revoked in the manner provided by this Act:

Provided that nothing herein contained shall be construed to relieve the owner or occupier of such warehouse or his sureties from any other liability he or they may incur under this Act or in any way to diminish the powers of the Minister, or of the Collector of Customs, or Assistant Collector of Customs, under this Act.

[section 64 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2, and "licence" substituted for "certificate", by 2004:6 s.9 effective 26 March 2004]

Prohibition of goods being taken out of warehouse except on due entry and in presence of proper officer

65 (1) No warehoused goods shall be taken or delivered from the warehouse, except upon due entry and with the authority of the proper officer for exportation, or upon due entry and payment of the full duties payable thereon for home use.

(2) If any goods which have been warehoused or otherwise secured, either for home consumption or exportation are clandestinely or illegally removed from or out of any warehouse or place of security, then the owner or occupier of the warehouse or place of security, the owner of the goods and any person concerned in the removal of the goods, shall each forfeit the level 4 amount and all such goods shall be forfeited.

[section 65 subsection (2) substituted by 2004:6 s.10 effective 26 March 2004]

Remission of duty on goods lost in warehouse

66 If any goods warehoused, or entered to be warehoused, or entered to be delivered from the warehouse, are lost or destroyed by inevitable accident on board ship, or in removing, landing, or receiving the goods into the warehouse, or in the warehouse, the Collector of Customs may remit the duties due thereon or the Accountant-General may return the duties paid thereon (the monies for which are hereby declared to be a charge on the Consolidated Fund), on satisfactory proof being furnished to the Collector of Customs that such goods have been so lost or destroyed.

Penalty on persons clandestinely opening any warehouse

67 If any person clandestinely opens any warehouse, or, except with the authority of the proper officer acting in the execution of his duty, gains access to the goods therein, he shall for every such offence forfeit the level 4 amount.

[section 67 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Penalty on warehouse keeper neglecting to produce goods to proper officer.

68 If the occupier of any warehouse does not produce to any customs officer, on his request, any goods deposited in such warehouse which have not been duly cleared and

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delivered therefrom, such occupier shall for every such neglect forfeit the level 2 amount in respect of every item, package or parcel not so produced, besides the duties thereon.

[section 68 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; and amended by 2007:13 s.18 effective 29 March 2007]

Deficiencies in warehoused goods cleared for exportation not to be charged with duty unless apparently fraudulent

69 No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation, unless the principal customs officer at the port has reasonable ground to suppose that such deficiency or any part thereof has arisen from illegal abstraction.

Goods entered for warehousing not duly warehoused or fraudulently removed or concealed liable to forfeiture

70 If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or, being duly warehoused, are in any way concealed in or removed from the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise dealt with for the purpose of illegal mixing, removal, or concealment, then such goods shall be forfeited.

Goods may be removed in bond from one port to another

71 Any goods warehoused at any port in Bermuda may be removed by sea or inland carriage to any other port in Bermuda, in which the like kind of goods may be warehoused, to be re-warehoused at such other port under such regulations and with such security as the Collector of Customs, or other proper officer, may direct, on the delivery to the proper officer by the person requiring such removal of a request note, stating the particulars of the goods required to be removed, and with such other information and in such manner and from as the Collector of Customs, or other proper officer, may require.

Removal of goods between ports in Bermuda

72 On the delivery of any goods for removal, an account containing the particulars thereof, shall be transmitted by the proper officer of the port 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 two sufficient sureties to be approved by the Collector of Customs, or other proper officer, in a sum equal at least to the duty chargeable on such goods, for the due arrival and rewarehousing thereof at the port or place of destination, within such time as the Collector of Customs, or other proper officer, may require such bond to be taken by the Collector of Customs, or other proper officer, either of the port or place of removal, or the port or place of destination, as best suits the residence or convenience of the persons interested in such removal; and if such bond has been given at the intended port or place of destination, a certificate thereof, under the hand of the Collector of Customs, or other proper officer of such port, shall at the time of the entering of such goods be produced to the Collector of Customs, or other proper officer of the port of removal, and such bond shall not be discharged unless such goods have been produced to the proper officer and duly re-warehoused at the port of destination or unless the full duties of customs have been paid thereon within forty-eight hours after the arrival thereof, but in no case later than the time

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allowed for such removal, or have been otherwise accounted for to the satisfaction of the Collector of Customs, or other proper officer, nor until the full duties due upon any deficiency of such goods not so accounted for have been paid, and any expense incurred by the Department in such removal shall be repaid into the Consolidated Fund by the persons requiring such removal within two days from the time allowed for such removal.

Goods on arrival at port of destination to be subject to same regulations as goods on first importation

73 Upon the arrival of such goods at the port or place of destination, the goods shall be entered and warehoused in the same manner, and under, and subject to the same laws, rules and regulations, so far as the same are or can be made applicable, as are required on the entry and warehousing of goods on the first importation thereof.

PART V

DRAWBACK AND REFUND OF DUTY; EXEMPTION FROM DUTY

DRAWBACK AND REFUND OF DUTY

Allowance of drawback

74 Any person exporting from Bermuda any imported goods shall be entitled to drawback, upon the exporter, or his known agent, producing to the Collector of Customs satisfactory proof that such goods have been exported from Bermuda, and that the ship in which the goods have been exported has sailed from Bermuda for a period of not less than thirty days, and that such goods have not been re-landed in Bermuda subsequent to such reshipment of the goods:

Provided that—

- (a) every such exporter shall give notice in writing to the Collector of Customs of his intention to export such goods and of the name of the ship by which the goods are to be exported, and also shall attach to such notice a declaration stating that the full import duties on such goods have been paid and the date of the importation thereof and of the payment of such duties, with the name of the ship in which, and the place whence, the goods were imported; and
- (b) the drawback is claimed within two years after the payment of the duties on such goods, and such goods have been duly cleared for exportation at the office of the Collector of Customs, or Assistant Collector of Customs.

Restrictions on allowance of drawback

75 (1) Notwithstanding section 74 and subject as hereinafter provided, no drawback shall be allowed on the exportation of any imported goods which after importation have been used in Bermuda, or of any goods which are not exported, or which from the nature or condition thereof on exportation are incapable of being identified with the original importation.

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- (2) Drawback or a percentage thereof shall be allowed on—
 - (a) all empty barrels and other external packages and coverings which are exported from Bermuda on proof to the satisfaction of the Collector of Customs, or other proper officer, and that import duty has been paid thereon to the extent of the drawback claimed; and
 - (b) such goods or parts of goods as are proved to the satisfaction of the Collector of Customs or other proper officer to be incorporated in the goods manufactured in Bermuda which are exported from Bermuda and which are of a description specified in the Fourth Schedule to the Customs Tariff Act 1970 [title 14 item 12], subject to such conditions as to the percentage of the import duty, which it is established to the satisfaction of the Collector of Customs or other proper officer to have been paid on such goods or parts of goods, to be allowed and otherwise as may be specified in that Schedule.
- (3) Nothing in this section shall in any way affect the powers of the Collector of Customs under section 59.

Forfeiture of drawback goods not agreeing with shipping bill

76 (1) If any goods on which drawback is claimed are shipped, or brought to any quay, wharf or other place to be shipped for exportation, and are, on examination by the proper officer, found not to agree with the entry in the shipping bill, or other proper document for allowance of drawback on shipment, or are found to be of less value for home use than the amount of the drawback claimed, then all such goods and the packages containing the goods, with all other the contents therein, shall be forfeited.

(2) The person entering such goods and claiming the drawback thereon shall in any such case forfeit the level 3 amount, or treble the value of the goods, at the election of the Collector of Customs.

(3) If any goods which have been shipped for exportation are re-landed without the permission of the Collector of Customs, or other proper officer, then such goods and the packages containing the goods shall, with all other the contents thereof, be forfeited.

[section 76 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Refund of import duties paid by mistake or to give effect to a relief

77 (1) Whenever any import duty or other money is paid by mistake the Accountant-General, on it being proved to the satisfaction of the Collector of Customs that the duty or other money has been so paid by mistake, may refund to the person who paid such duty or other money, or his lawful agent, the amount so paid by mistake, if the duty or money is claimed and proof of the mistake is made within six months after the payment of such duty or other money.

(2) In order to give effect to any relief from import duty afforded by or under any enactment, the Accountant-General, on it being proved to the satisfaction of the Collector of Customs that the person claiming the relief is entitled to the relief and that the amount

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claimed is repayable, may refund to the person claiming the relief the amount that is repayable.

[section 77 repealed and substituted by 2004:6 s.11 effective 26 March 2004]

78 *[section 78 repealed by 2004:6 s.12 effective 26 March 2004]*

Exemption from duty

Goods brought back to Bermuda

79 *[repealed by 2015 : 7 s. 13]*

[Section 79 repealed by 2015 : 7 s. 13 effective 1 April 2015]

Abatement of duty on goods damaged by sea, accident, derelict, wreck

80 (1) Whenever it is proved to the satisfaction of the Collector of Customs, or Assistant Collector of Customs, that the value of any dutiable goods has been depreciated by sea damage, accident or otherwise before importation, the Collector of Customs may grant an abatement of the import duties thereon; but no claim for abatement shall be allowed on account of damage unless the claim is made on the first examination thereof, and in such form and manner as the Collector of Customs may direct nor unless it is proved to the satisfaction of the Collector of Customs, or Assistant Collector of Customs, that such damage was sustained after leaving a country outside Bermuda and before arriving in Bermuda.

(2) All goods, being derelict, jetsam, flotsam, and wreck, brought or coming into Bermuda shall at all times be subject to the same duties as goods of the like kind on importation into Bermuda are subject to, unless it is shown to the satisfaction of the Collector of Customs, or Assistant Collector of Customs, that the goods are entitled to an abatement in respect of such damage.

(3) The damage sustained by such goods, whether so imported, or derelict, jetsam, flotsam or wreck as aforesaid, shall be assessed by the customs officer of the port or place of arrival or discharge, if competent thereto, but if not, or if the Collector of Customs, or in the case of the goods arriving in St. George's, the Assistant Collector of Customs, shall entertain any doubt as to the amount of such damage, he may call upon two indifferent merchants to examine the goods and certify to what extent in their judgment the goods are lessened in value by such damage, whereupon the Collector of Customs may make such abatement in the import duty originally chargeable thereon as in his judgment is reasonable.

[section 80 subsection (1) amended by 2007:13 s.19 effective 29 March 2007]

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PART VI

SUPPLEMENTAL PROVISIONS AND LEGAL PROCEEDINGS

SALE OF GOODS TO COVER EXPENSES

Sale of goods insufficient to cover expenses

81 If any goods or things authorized to be sold under this Act are not sold when offered for sale, or, if sold do not sell for enough to satisfy the costs and charges incurred by the Department for warehousing and all other incidental expenses in respect of the same, such expenses, or, so much thereof as the proceeds received from such sales is insufficient to satisfy, may be paid out of the Consolidated Fund.

Customs supervision

Powers of customs officers to board any ship, secure hatches, mark goods

82 (1) Any customs officers and any other officers who are duly appointed or engaged in the collection and securing of the revenue of Bermuda may board any ship arriving at Bermuda, and freely stay on board until all the goods laden therein have been duly delivered from the ship, and such officers shall have free access to every part of the ship, with power to fasten down hatches and to mark any goods before landing.

(2) It shall be the duty of the proper officer to go on board every ship as soon as possible after her arrival at Bermuda, and then to lock up, seal, mark, or otherwise secure all hatches and bulkheads, and all goods on board such ship.

(3) If any place, or any box or chest, is locked and the keys are withheld, then such officer, with the sanction of the Collector of Customs, or other proper officer of the port, may open or cause to be opened any such place, box or chest, in the best manner in his power.

(4) If any goods are found concealed on board any such ship they shall be forfeited, and if any such officer places any lock, mark, or seal upon any goods on board, or on any hatch, bulkhead or other part of such ship, except the entrances to the cabin and to the forecastle, and such lock, mark or seal is wilfully opened, altered or broken, or wilfully attempted to be opened or broken, before due delivery of such goods, or if any such goods are secretly conveyed away, or if any hatch, or bulkhead, after having been fastened or otherwise secured by the officer, is opened, then the master of the ship shall forfeit the level 4 amount.

(5) It shall be the duty of such officer to take proper precaution for securing all goods in any cabin or forecastle of any such ship.

(6) Any customs officer may in the execution of his duties as such lock up, seal or mark, or by the use of any other device secure—

- (a) any goods; or
- (b) any place or container having in it any goods imported into these Islands.

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(7) Where any lock, seal, mark or other device has been used by a customs officer to secure any such goods, place or container, then, if, without the authority of the proper officer—

- (a) that lock, seal, mark or other device is wilfully removed or destroyed, or tampered with; or
- (b) at any time before that lock, seal, mark or other device is lawfully removed, any of those goods, or any goods in any such place or container, are wilfully removed by any person,

then that person, and the person then in charge of the goods, shall be guilty of an offence against this Act, and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding the level 6 amount or three times the value of the goods, whichever is the greater amount; and the goods shall be forfeited.

(8) Without prejudice to any other provision of or under this Act, any customs officer may board any ship for the purpose of conducting a search for uncustomed goods.

[section 82 amended by 1995:4 effective 22 December 1996; subsection (7) amended by 2004:6 s.13, and subsections (4) and (7) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2, effective 26 March 2004; subsection (8) inserted by 2012 : 16 s. 9 effective 1 June 2012]

Attendance of customs officers at extra hours and on Sundays and holidays on lading and unlading, under regulations of Minister

83 Under such regulations as the Minister may from time to time approve, make, and publish, any customs officer may attend the lading or unlading of any goods from or on board of any ship, either at hours not expressly sanctioned or provided for by this Act, or in case of emergency on Sundays or any other days now reserved as holidays by law, and the lading or unlading of goods at such times, or on such days, in strict conformity with such regulations, shall be legal to all intents and purposes but all or any goods which are laden or unladen on or from any ship on days, or in hours, or at times, not expressly sanctioned by this Act, and not in strict conformity with such regulations, (except such goods as may be landed under the provisions hereinbefore made for wrecked or stranded goods) shall be held and taken to have been illegally laden or unladen; and all ships, boats, carriages and vehicles, and all cattle made use of in the lading or unlading of the same shall be forfeited, and every person concerned or assisting therein or harbouring or knowingly having possession of any goods so illegally laden or unladen shall forfeit and pay treble the value thereof, or if the same goods or any part thereof are not seized by a customs officer, then the level 4 amount.

[section 83 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Administration of Queen's Warehouses

Queen's Warehouses

84 (1) The Collector of Customs may from time to time by notice in the Gazette declare any premises suitable for the custody of goods for the security of the revenue to be a Queen's Warehouse.

(2) Subject as hereinafter in this section provided, the Minister may make regulations relating to the management and control of Queen's Warehouses and with respect to the storage of goods therein; and without prejudice to the generality of the foregoing provisions of this subsection, regulations made as aforesaid may make provision—

- (a) for authorizing or requiring the removal to a Queen's Warehouse of uncustomed goods or goods in respect of which import duties have not been paid;
- (b) for regulating the release of goods from any Queen's Warehouse;
- (c) for regulating or requiring the transfer of goods from a bonded warehouse to a Queen's Warehouse and vice versa;
- (d) for regulating or restricting the handling, transmission or disposal of goods released from a Queen's Warehouse;
- (e) for requiring goods stored in a Queen's Warehouse to be removed therefrom, for declaring the incidence of customs duties falling to be paid in respect of goods upon such removal, and for the forfeiture, sale or other disposal of such goods where any requirement as aforesaid is not duly complied with;
- (f) for restricting the classes or categories of goods, or of goods in any particular condition, which may be stored in a Queen's Warehouse;
- (g) with respect to the payment of expenses connected with the maintenance and operation of any Queen's Warehouse, including the wages of labourers and the cost of moving goods into and out of any Queen's Warehouse;
- (h) for levying rental or storage charges in respect of goods stored in a Queen's Warehouse;
- (i) for the examination of goods stored in a Queen's Warehouse;
- (j) for declaring the incidence of liability in respect of damage to, or destruction or loss of, goods stored in, or being moved into or out of, or being delivered from, a Queen's Warehouse;
- (k) for regulating the entry of persons into Queen's Warehouses;
- (l) for prescribing forms to be completed in connection with any of the purposes aforesaid;

and regulations made as aforesaid may relate to Queen's Warehouses generally, or to any Queen's Warehouse used for the storage of any particular class or category of goods.

(3) Any person who contravenes any provision of any regulations made in pursuance of the foregoing provisions of this section or with any order, direction or requirement lawfully made, given or imposed by any person under the authority of those regulations, commits an offence against this Act:

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Punishment on summary conviction: a fine of the level 3 amount; or, where the offence is in relation to any goods, a fine of an amount equal to three times the value of such goods, whichever is the greater amount, or imprisonment for 3 months, or both such fine and imprisonment.

- (4) The negative resolution procedure shall apply to regulations made under this section.

[section 84 subsection (3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; amended by 2007:13 effective 29 March 2007]

Offences

The standard scale of penalties

84A (1) There shall be a standard scale of penalties, which shall be known as "the standard scale".

- (2) The standard scale shall be as set out in the Third Schedule to this Act.

(3) Where any relevant enactment provides that a person shall be liable to a fine, maximum fine, penalty or maximum penalty by reference to an amount expressed to be of a certain level, the enactment is to be construed as referring to the amount, specified in the standard scale, relating to that level.

(4) In this section "relevant enactment" means any provision of this Act or any provision of the outlying Acts.

(5) In this Act, the expression "outlying Acts" refers to any of the following enactments—

- (a) Arms Exportation Act 1862 ("AEA");
- (b) Airport (Duty Free Sales) Act 1997 ("A(DFS)A");
- (c) Bonding of Precious Stones Act 1952 ("BPSA");
- (d) Customs Duty (Special Remission) Act 1951 ("CD(SR)A");
- (e) Consular Relations Act 1971 ("CRA");
- (f) Historic Articles (Export Control) Act 1983 ("HA(EC)A");
- (g) Hotels Concession Act 2000 ("HCA");
- (h) Hotels (Temporary Customs Duty Relief) Act 1991 ("H(TCDR)A");
- (i) Immature Spirits Restriction Act 1921 ("ISRA");
- (j) Post Office Act 1900 ("POA");
- (k) Restaurants (Temporary Customs Duty Relief) Act 2002 ("R(TCDR)A");
- (l) Spirits Act 1890 ("SA");
- (m) Sufferance Warehouse Act 1875 ("SWA"); and

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(n) Retail Shops (Temporary Customs Duty Relief for Capital Investments) Act 2008.

(6) If it appears to the Minister of Finance that there has been a change in the value of money since the relevant date, he may by Order, substitute for the amounts specified in the Third Schedule, such amount or amounts as appear to him justified by the change.

(7) In subsection (6) the “relevant date” means—

- (a) the date of the coming into force of this section; or
- (b) where the amounts specified in the Third Schedule have been substituted by an Order under subsection (6), the date of that Order.

(8) An Order made under subsection (6)—

- (a) shall be made subject to the negative resolution procedure; and
- (b) shall not affect any punishment for an offence committed before that Order comes into force.

[section 84A inserted by 2004:6 s.14 effective 26 March 2004; amended by 2008:13 s. 18 effective 1 April 2008; subsection (5)(b) amended by 2011 : 38 s. 14 effective 6 December 2011]

Penalty for false documents or statements

85 (1) If any person, in connection with a customs and excise matter, makes, signs, or submits or uses a document or makes a statement before a customs officer or otherwise, which is untrue in any particular, the person making, signing, submitting or using the document or making the statement shall forfeit and pay a sum in the level 4 amount.

(2) Any person who, with intent to deceive, in connection with a customs and excise matter—

- (a) makes, signs, submits or uses a document or makes a statement before a customs officer or otherwise, which is untrue in any material particular; or
- (b) counterfeits any document or any seal, signature, initials, or other mark on any document,

shall be guilty of an offence and liable on conviction on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of the level 7 amount or to both such imprisonment and fine.

(3) In addition to any penalty under subsection (1) or (2), the goods in respect of which the document is made, signed, submitted or used, or the statement is made shall be liable to forfeiture.

(4) In this section—

“a customs and excise matter” includes—

- (a) the collection or protection of revenue;
- (b) the importation or exportation of any goods; or

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(c) the removal of goods from a bonded warehouse or a customs area.

[section 85 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; repealed and replaced by 2015 : 53 s. 26 effective 1 January 2016]

Penalties for false customs declarations

86 (1) If any person makes a customs declaration, before a customs officer or otherwise, which is untrue in any particular, the person making the declaration shall forfeit and pay a sum in the level 4 amount.

(2) Any person who, with intent to deceive, makes a customs declaration that is untrue in any material particular shall be guilty of an offence and liable on conviction on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of the level 7 amount or to both such imprisonment and fine.

(3) In addition to any penalty under subsection (1) or (2), if any person fails to declare or misdeclares any article, that article shall be liable to forfeiture.

[section 86 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; section 86 repealed and replaced by 2008:14 s.9 effective 25 March 2008; subsection (2) amended by 2012 : 16 s. 10 effective 1 June 2012]

Penalties for fraudulent import entries or concealments

87 If any person imports, or causes to be imported, goods of one denomination concealed in packages of goods of any other denomination, or any package containing goods not corresponding with the entry thereof, or directly or indirectly imports, or causes to be imported, or entered, any package of goods as of one denomination which is afterwards discovered either before or after delivery thereof to contain other goods, or goods subject to a higher rate or other amount of duty than those of the denomination by which such package or the goods in such package were entered, then such package and the goods therein shall be forfeited, and such person shall forfeit for every such offence a penalty of the level 4 amount or treble the value of the goods contained in such package, at the election of the Collector of Customs.

[section 87 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Penalty for certain wilful frauds

88 Every person knowingly concerned in unloading, unshipping, transporting, or landing, or who knowingly harbours, keeps or conceals, or knowingly permits or suffers, or causes or procures, to be harboured, kept or concealed, any goods liable to forfeiture under this Act, or any amending Act, or to whose hands and possession any such goods shall knowingly come, or who knowingly assists or is concerned, in the illegal removal of any such goods, shall forfeit either treble the value of the goods or a penalty of the level 4 amount, at the election of the Collector of Customs.

[section 88 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Restricted goods imported free of duty; safeguarding of revenue

89 (1) In this section "restricted goods imported free of duty" means goods in respect of which duty is ordinarily payable on their importation, but which are, under any statutory provision, imported free of duty by or on behalf of any specified authority, corporate body or person or are delivered free of duty to, or in respect of which a drawback of duty is claimed by or on behalf of, any specified authority, corporate body or person, and includes goods intended for export from Bermuda in respect of which import duty has not been paid; and cognate expressions shall be construed accordingly.

(2) Where restricted goods are imported free of duty the Collector of Customs may impose such conditions with respect to the handling, storing, movement, distribution or sale of such restricted goods as appear to him necessary for the proper safeguarding of the revenue; and if any person handles, stores, moves, distributes, or sells any restricted goods contrary to any condition imposed as aforesaid then, unless he proves that he did not know, and had no reasonable cause to believe, that such goods were subject to that condition, such goods shall be forfeited and such person shall forfeit for every such offence a penalty of the level 4 amount or treble the value of the goods at the election of the Collector of Customs.

(3) Where restricted goods have been imported free of duty, and the statutory provision under which the restricted goods were so imported declares or provides specific purposes for which such goods may be imported free of duty, or specific classes or descriptions of persons who are to be entitled to use such goods after importation free of duty, or specific purposes for which such goods may be used after importation free of duty, then in any such case if any person, without lawful excuse, the proof of which shall be upon him—

- (a) uses any of such restricted goods for a purpose other than a specific purpose declared as aforesaid to be a purpose for which such goods may be imported free of duty; or
- (b) being a person not declared as aforesaid to be entitled to use such restricted goods, purchases, deals in, possesses for future use or uses any of such goods; or
- (c) causes or procures any person (not being a person declared as aforesaid to be entitled to use such restricted goods) to use any of such goods, or knowingly allows any such person to possess for future use or to use any of such goods, or sells or offers for sale any of such goods to any such person,

then, unless he proves that he did not know and had no reasonable cause to believe that such goods were restricted goods imported free of duty, or, as the case may be, that each other person in respect of whom the transaction was effected was not a person declared to be entitled to use such goods, such goods shall be forfeited and he shall forfeit for every such offence a penalty of the level 4 amount or treble the value of the goods at the election of the Collector of Customs.

(4) In any proceedings taken in respect of any forfeiture of goods or for the recovery of any penalty under the foregoing provisions of this section—

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(a) if evidence is adduced by or on behalf of the Collector of Customs of facts which create a reasonable suspicion that any goods in respect of which the proceedings have been taken are restricted goods imported free of customs duty, it shall be presumed, unless the contrary is proved, that such goods are restricted goods imported free of customs duty;

(b) it shall be presumed, unless the contrary is proved, that any goods proved to be in the possession or under the control of any person are in possession for future use or are being used by that person.

(5) Notwithstanding anything in the foregoing provisions of this section, the possession or use of or dealing in, any restricted goods imported free of duty shall not constitute an offence against this section, and such goods shall not be forfeited, although such possession, use or dealing in would otherwise constitute an offence against this section,—

(a) if the possession, use or dealing in takes place under the authority of any general or special authorization in writing given by the Collector of Customs; and

(b) if any terms and conditions as to the payment of customs duty or otherwise which may be imposed by the Collector of Customs in giving such general or special authorization are duly fulfilled.

(6) The provisions of section 97 shall apply in relation to any goods in respect of which it is reasonably suspected that an offence against this section has been committed, as those provisions apply in relation to goods reasonably suspected to be smuggled goods.

(7) For the purposes of this section it is hereby declared that any statutory provision whereby it is declared that any restricted goods imported free of duty may be sold to any particular class or description of persons shall be construed as implying that no persons, not being of a class or description to whom such a sale may lawfully be made, shall be entitled, subsequent to any such sale, to use any such goods except as expressly provided in this or in any other Act.

(8) In this section any reference to the use of restricted goods imported free of duty shall be construed, in respect of consumable goods, as a reference to the consumption of such goods. In this subsection "consumable goods" means food, liquor, beverages, cigars, cigarettes, tobacco and other consumable goods.

(9) The foregoing provisions of this section shall be construed as being in aid of, and supplemental to, any provision of this or of any other Act relating to the safeguarding of the revenue; and nothing in the foregoing provisions of this section shall be construed so as to derogate from or abridge any express provision of this or of any other Act relating thereto.

[section 89 subsections (2) and (3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Control of employment of convicted persons in customs areas etc

89A (1) It shall be unlawful—

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- (a) for a person who has been convicted of—
 - (i) an offence under the Misuse of Drugs Act 1972 [*title 11 item 14*]; or
 - (ii) an offence under the Criminal Code [*title 8 item 31*] involving dishonesty,
to engage in any occupation in a customs area or in a Queen's Warehouse;
or
- (b) for a person to employ in such an occupation another person whom he
knows to have been so convicted,

if the person so engaging or, as the case may be, so employed is not the holder of a valid licence granted to that person under subsection (2).

(2) The Collector of Customs may—

- (a) grant licences in such form as he may think fit for the purposes of subsection (1); and
- (b) at any time revoke any such licence once granted,

in his discretion.

(3) A person who contravenes subsection (1) commits an offence against this Act:

Punishment on summary conviction: imprisonment for 2 years or a fine of the level 5 amount or both such imprisonment and fine.

[section 89A subsection (3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; subsection (2) amended by 2012 : 16 s. 11 effective 1 June 2012]

Prohibition on importation of certain goods

90 (1) Except as provided by the section 89, no person shall import into Bermuda goods which are marked in such a way as to indicate that they were originally intended for use or consumption—

- (a) *[deleted by 2002 : 6]*
- (b) as goods falling within the meaning of "restricted goods imported free of duty" as defined in section 89(1).

(2) Where a person acts in contravention of subsection (1), or is found in possession of any such goods, the goods shall be liable to forfeiture and such person shall be liable to pay a penalty of the level 4 amount or treble the value of the goods at the election of the Collector of Customs.

[section 90 amended by 2002:6 s.4 & Sch 3 effective 18 June 2002; subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Lien no defence unless duty tendered

91 It shall be no defence to the possession of any goods in contravention of this Act that the person in possession thereof is exercising a statutory or common law lien thereover

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unless, as soon as practicable after the right to exercise such lien arises, that person tenders to the Collector of Customs the duty payable on such goods or enters into such arrangements with the Collector of Customs for the payment of such duty as the Collector of Customs may consider appropriate.

Offence by company

91A Where a body corporate has been proved to have committed an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director or officer of that body corporate or any person who is purporting to act in that capacity, that director, officer or person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[Section 91A inserted by 2008:14 s.10 effective 25 March 2008]

Miscellaneous

Account of bullion or coin imported to be delivered to Collector of Customs

92 If the importer, owner, or consignee, of any bullion or coin, not being bullion or coin brought by passengers, imported into Bermuda, does not, within ten days after the landing thereof deliver to the Collector of Customs, or other proper officer, a full and true account thereof, including its value, he shall forfeit the level 4 amount.

[Section 92 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Forfeiture of goods concealed in packages or landed without entry; passengers' luggage

93 If any goods or other things are found concealed in any way or packed in any package or parcel to deceive a customs officer, then such package or parcel, and all the contents thereof, shall be forfeited; and if any goods are taken or delivered out of any ship or out of any warehouse, not having been duly entered, except as expressly allowed by this Act, or any amending Act, the goods shall be forfeited:

Provided that no entry shall be required in respect of the baggage or luggage of passengers which may be examined, landed and delivered, under such regulations as the Collector of Customs, with the sanction of the Minister, may direct; but if any prohibited goods, or any goods apparently intended for sale or merchandise, or any goods not being bona fide the property of the passenger, and intended for his personal use or the use of his family travelling with him, are found therein, or in any package or parcel alleged by the passenger or his agent to contain passengers' baggage, either before or after landing, the goods shall be forfeited together with everything packed therewith.

Forfeiture of boats used in removal of goods liable to forfeiture

94 All ships, boats, carriages, and cattle, made use of in the removal of any goods liable to forfeiture under this Act, or any amending Act, shall be forfeited; and every person who assists or is otherwise concerned in the un-shipping, landing, or removal, or in the harbouring of such goods, or into whose hands or possession the goods shall knowingly come, shall forfeit and pay treble the value thereof:

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Provided that when any goods so un-shipped, landed, or removed, or any part thereof, happen not to be seized by a customs officer, then in every such case, instead of the penalty hereinbefore imposed, every person who assists or is otherwise concerned, in the un-shipping, landing or removal, or in the harbouring of any such goods, or into whose hands the goods knowingly come, shall forfeit and pay the level 3 amount with costs of suit.

[section 94 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Restrictions upon opening of ships' bars and shops while within territorial waters

95 (1) Without prejudice to any other provision of this Act, but subject as hereinafter provided, it shall not be lawful for the master of any ship ordinarily engaged in voyages to places outside Bermuda to cause or allow—

- (a) any bar in the ship ordinarily used for the sale of intoxicating liquor; or
- (b) any shop in the ship ordinarily used for the sale of any articles or goods to passengers or to members of the ship's company,

to be kept open or to be operated during such period as the ship is within the territorial waters of Bermuda:

Provided that where written permission is given by the Collector of Customs in that behalf, it shall not be unlawful for the purposes of any Act relating to the safeguarding of the revenue, but without prejudice to the next following subsection, for the master of a ship to cause or allow any bar as aforesaid to be kept open or to be operated during such periods, and subject to such other conditions, as may, for the purpose of safeguarding the revenue, be specified in the permission.

(2) Notwithstanding anything in the foregoing provisions of this section, but without prejudice to the powers conferred upon the Collector of Customs thereby, it shall not be lawful for any person to buy or sell or otherwise deal in any articles or goods in any ship's bar or shop—

- (a) unless due or proper entry under this Act has been made in respect of such articles or goods; or
- (b) unless the purchase, sale or dealing in is effected by, or as the case may be, to, a person who is, bona fide, a passenger in the ship or who is a member of the ship's company.

(3) Every person who contravenes, or who causes or procures or allows any contravention, of any of the foregoing provisions of this section, or of any condition lawfully imposed thereunder, shall forfeit and pay the level 4 amount.

[section 95 subsection (3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Searches

Search of person suspected of carrying uncustomed goods

96 (1) If any customs officer has reasonable grounds to suspect that any person is carrying or has under his control any uncustomed goods in a customs area or on a ship being boarded or searched under section 82 or any place being searched under section 97 or 98 of this Act, the customs officer may detain and search that person and anything that the person is carrying or has under his control.

(2) Notwithstanding subsection (1), where a customs officer decides to conduct an outer garment or intimate search on a suspect, under the circumstances in subsection (1), the suspect shall be informed by the customs officer of his right to require the Collector or any senior officer of the Department, authorised in that behalf by the Collector, to rescind the decision to conduct an outer garment or intimate search on him.

(3) A person who has been informed of his right to require the Collector or any senior officer of the Department, authorised in that behalf by the Collector, to rescind the decision to conduct an outer garment or intimate search on him under subsection (2), may request the Collector or that senior officer, to rescind the decision to conduct an outer garment or intimate search on him.

(4) The Collector or the senior officer of the Department authorised in that behalf by the Collector, may oblige or refuse a request made to him by a suspect, under subsection (3).

(5) In conducting a search under this section, a male shall not conduct an outer garment or intimate search on a female and a female shall not conduct an outer garment or intimate search on a male.

(6) Where a person suspected of carrying or having uncustomed goods under his control—

- (a) refuses or fails to comply with any direction given to him by a customs officer for the purpose of effecting his detention and search; or
- (b) evades detention and search,

any customs officer may, for the purpose of effecting the detention and search, use reasonable force within or outside the customs area, or place being searched, and either on or off of the ship, to effect such detention and search.

(7) Any uncustomed goods found to be carried by a suspect or found to be under the control of a suspect may be forfeited.

(8) Any suspect who in connection with his detention and search under this section—

- (a) refuses or fails to comply with any direction given to him by a customs officer; or
- (b) obstructs any customs officer in the performance of his duty,

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commits an offence and is liable on summary conviction to a fine of the level 3 amount.

[Section 96 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; Section 96 repealed and substituted by 2012 : 3 s. 8 effective 1 June 2012; Section 96 amended by 2012 : 16 s. 5 effective 1 June 2012]

Grant of search warrant for smuggled goods

97 If any customs officer has reasonable cause to suspect that any uncustomed goods are harboured, kept or concealed in any building, vessel or other place, and it is so made to appear by information on oath before any Magistrate, such Magistrate may by special warrant under his hand authorize such customs officer to enter and search such building, vessel or other place, and to seize and carry away any such goods as aforesaid as may be found therein; and such customs officer may in case of resistance break open any door, and force and remove any other impediment or obstruction to such entry, search, or seizure as aforesaid, and may, if he sees fit, avail himself of the services of any police officer, to aid and assist in the execution of such warrant, and any police officer is hereby required when so called upon to aid and assist accordingly.

[Section 97 amended by 2012 : 16 s. 12 effective 1 June 2012]

Power of search

98 Any customs officer may with or without assistants, whenever he deems it necessary, open or cause to be opened for search, and may search, any package or parcel of goods containing or supposed to contain any dutiable and uncustomed goods, or which he deems it necessary to examine for the purpose of ascertaining whether it contains any such goods, using no more force than is reasonably necessary for that purpose, and for any such purpose may force or open any locks, or other fastenings and enter any ship, boat, premises, or place where any such package or parcel may be, or may be suspected to be kept or concealed.

[Section 98 amended by 2012 : 3 s. 9 effective 1 June 2012; amended by 2012 : 16 s.13 effective 1 June 2012]

Customs traders: record-keeping requirements

98A (1) The First Schedule has effect with respect to record-keeping requirements in relation to a customs trader.

(2) In this section, "customs trader" means the person referred to in paragraph 1(2)(b) of the First Schedule.

[section 98A inserted by 2000:30 s.9 effective 8 November 2000, and amended by 2004:6 s.19 & Sch 3 effective 26 March 2004]

Production of records

99 (1) Any customs officer, duly authorized in writing by the Collector of Customs in that behalf, may, within two years of importation or exportation of any goods, require the importer, exporter or the owner thereof—

- (a) to produce all records relating in any way to the importation (as the case may be) of such goods; and

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- (b) to answer any question in relation thereto; and
- (c) to make such declaration in writing with respect to such goods,

as the customs officer may consider necessary.

(1A) Subsection (1) shall not apply to any person carrying on a trade or business which consists of or includes importing or exporting any goods of a class or description subject to duty (whether or not in fact chargeable with duty).

(2) The customs officer may seize and detain any such record as may be produced to him under this section if, in his opinion, it may afford evidence of the commission of any offence against this Act:

Provided that the customs officer shall, at the request of the person who has produced such record, deliver to him a certified copy thereof; and such certified copy shall be receivable in evidence in all courts as if it were the original until such time as the original record, is returned into the possession of its owner.

(3) Any person who fails to comply with any requirement made by a customs officer under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of the level 3 amount.

[section 99 amended by 2000:30 s.10 effective 8 November 2000; subsection (3) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Seizure and condemnation of goods

Falsification, destruction etc. of records

99A Any person who wilfully and fraudulently falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, records relating to the importation or exportation of any goods shall be guilty of an offence and liable on summary conviction to a fine of the level 4 amount or to imprisonment for twelve months or both and on conviction on indictment to a fine of the level 6 amount or to imprisonment for 3 years or both.

[section 99A inserted by 2000:30 s.11 effective 8 November 2000; penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

Seizure of goods; obstruction of customs officers

100 (1) All goods liable to forfeiture under this Act, or any amending Act, shall and may be seized and secured by any customs officer, or by any person employed for that purpose, by or with the concurrence of the Collector of Customs, or other principal officer of the port.

(2) Every person who in any way hinders, opposes, molests, or obstructs, any customs officer, or any person so employed as aforesaid, in the exercise of his office, or any person acting in his aid or assistance, shall be guilty of an offence against this Act, and shall be liable on conviction by a court of summary jurisdiction to a fine of the level 3 amount.

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(3) For the purpose of subsection (2), an unauthorised disclosure of information, by any person, is an obstruction.

[section 100 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; amended by 2007:13 s.20 effective 29 March 2007; subsection (2) amended and subsection (3) inserted by 2012 : 16 s. 14 effective 1 June 2012]

Disposal of goods seized and condemned

101 (1) All goods that are seized as forfeited under this Act shall be deemed to be condemned, and may be dealt with in the manner directed by law with respect to goods seized and condemned for breach of this Act, unless the person from whom the goods have been seized, or the owner of them, or a person authorised by the owner either—

- (a) gives notice in writing, within one month from the day of the goods being seized, to the Collector of Customs that they claim the goods, or intend to claim the goods under section 105; or
- (b) requires, in accordance with section 122, a review of a decision to seize and forfeit the goods.

(2) If, following a claim or review referred to in subsection (1)(a) or (b), the seizure and forfeiture of goods is affirmed, the goods are deemed to be condemned and may be dealt with in the manner directed by law with respect to goods seized and condemned for breach of this Act.

[section 101 amended by 2007:13 s.21 effective 29 March 2007; repealed and replaced by 2008:14 s.11 effective 25 March 2008]

Disposal of goods seized and condemned contrary to a prohibition or restriction

102 (1) All goods that are—

- (a) imported;
- (b) exported or re-exported;
- (c) entered for a customs procedure; or
- (d) released for a customs procedure

contrary to any prohibition or restriction under any statutory provision shall be liable to forfeiture under this Act and may be seized and condemned.

(2) All goods that have been seized and condemned under this Act may be disposed of as the Collector of Customs sees fit.

(3) In this section—

- (a) “customs procedure” includes any procedure relating to the—
 - (i) importation of goods, including importation for home use or for free circulation,
 - (ii) storage, holding or processing of goods without payment of duty as part of any suspensive procedure, or

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- (iii) exportation or re-exportation of goods;
 - (b) "entered" means placed under a customs procedure whether by customs declaration, conduct or otherwise;
 - (c) "released" means removed for a customs procedure whether by acceptance of a customs declaration, payment of duty or otherwise.
- (4) In subsection (3)(a) the expressions "free circulation", and "suspensive procedure", shall be construed in the same manner as those expressions are to be construed in section 139 of the Copyright and Designs Act 2004.

[section 102 amended by 2007:13 s.21 effective 29 March 2007; repealed and replaced by 2008:14 s.12 effective 25 March 2008]

Goods seized may be replevined on double security

103 (1) If any goods are seized as forfeited under this Act, and detained, then any court having jurisdiction to try and determine such seizure may order the delivery thereof on security by bond with two sufficient sureties to answer double the value of the same, in case of condemnation, and such bond shall be taken to the use of Her Majesty in the name of the Collector of Customs; and such bond shall be delivered to and kept in the custody of the Collector of Customs, and in case the goods are condemned the value thereof shall be paid into the hands of the Collector of Customs, who shall thereupon cancel the bond.

(2) Any court before which any goods so seized are prosecuted may, if the court sees fit, order the sale thereof, or of any part thereof, pending such prosecution on application by the prosecutor or any claimant.

[section 103 subsection (1) amended by 2007:13 s.22 effective 29 March 2007]

Claims

Burden of proof in case of dispute regarding goods

104 If any goods are seized for non-payment of duties, or of surcharges or any other cause of forfeiture, and any dispute arises whether the duties or surcharges have been paid for the goods, or the goods have been lawfully imported, or lawfully laden or exported, the proof thereof shall lie on the owner or claimant of such goods, and not on the customs officer who seizes or stops the goods.

Claims to be entered in name of owner and made on oath; punishment for making false oath

105 (1) No claim to any thing seized under this Act and returned into any court for adjudication, shall be admitted unless such claim is entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing is made by the owner, or by his counsel or agent by whom such claim shall be entered, to the best of his knowledge and belief.

(2) Every person making a false oath thereto commits an offence against this Act:

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Punishment on conviction on indictment: imprisonment for 2 years or a fine of the level 5 amount or both such imprisonment and fine.

[section 105 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

If goods owned by more than five co-proprietors, two may make the oath

106 When any ship or goods seized for any cause of forfeiture is at the time of the seizure thereof the bona fide property of any number of proprietors exceeding five, it shall not be necessary for more than two of them to enter a claim or appearance on the part of themselves and their co-proprietors or to make the oath required by section 105.

If goods owned by a company or partners, oath may be made by public officer or agent; punishment for making false oath

107 (1) When any such goods are at the time of the seizure the property of a joint stock company or of co-partners, such claim and appearance may be entered and oath made by the public officer of such company, or by an agent for such co-partners, or by one of them.

(2) Every person who is convicted of taking a false oath as to the facts required to be sworn to on making any claim shall be deemed to have committed the offence of perjury and may be dealt with accordingly.

[section 107 subsection (1) amended by 2007:13 s.23 effective 29 March 2007]

Security for costs to be given before claim is entered

108 No person shall be admitted to enter a claim to anything seized in pursuance to this Act, or any amending Act, and prosecuted until sufficient security has been given in the court where such seizure is prosecuted in a penalty not exceeding \$240, to answer and pay the costs occasioned by such claim; and in default of giving such security, such things shall be adjudged to be forfeited and shall be condemned.

Writs of assistance

Writ of assistance to pursue dutiable goods

109 Under the authority of a writ of assistance granted by the Supreme Court or by a judge, upon the application of the Collector of Customs, or other proper officer, the Collector of Customs, or any customs officer, may enter any building or other place and search for, seize, and secure, any goods liable to forfeiture under this Act, or any amending Act, and in case of necessity may break open any doors and any chests or other packages for that purpose; and such writ of assistance when issued shall be deemed to be in force during the whole of the reign in which the writ has been granted, and for twelve months from the conclusion of such reign:

Provided that entry of any building or place under this section shall not be made in the night-time (that is to say, the interval between 8 o'clock in the evening and 6 o'clock in the morning) except in the company of a police officer.

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Recovery of penalties and forfeitures

Power of Collector of Customs to sue for duties

110 The Collector of Customs may sue for and recover any duty, surcharge or tax under any Act relating to the revenue to be received or collected by the Collector of Customs, together with full costs of suit before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [title 8 item 15], and any person aggrieved by the judgment of that court may appeal to the Supreme Court under the Civil Appeals Act 1971 [title 8 item 85].

Collection of penalties and forfeitures

111 Subject to section 111A, all penalties and forfeitures which may be incurred under any Act relating to the revenue to be received or collected by the Collector of Customs, shall and may be prosecuted, sued for and recovered, by the Collector of Customs, or any other customs officer, with costs of suit, before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [title 8 item 15], and any person aggrieved by the judgment of that court may appeal to the Supreme Court under the Civil Appeals Act 1971 [title 8 item 85].

[section 111 amended by 1998:12 effective 31 March 1998]

Collector of Customs may assess and restore

111A (1) Instead of taking proceedings under section 111 against any person who is liable to a civil penalty, the Collector of Customs, or the proper officer, may assess an amount due by way of civil penalty up to the maximum amount of the level prescribed by this Act or the relevant outlying Act and notify the person liable to the penalty accordingly.

(2) If an amount has been assessed as due from any person and the person has been notified in accordance with this section, then unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount shall, subject to any appeal under section 122B, be recoverable as if it were an amount of duty due from that person as an amount of the appropriate duty.

(3) The Collector of Customs or the proper officer may restore, subject to such conditions as the Collector of Customs considers appropriate, anything forfeited or seized by the Collector of Customs under any provision of this Act or an outlying Act.

(4) In this Act, "civil penalty" means any penalty or forfeiture which may be incurred under this Act or an outlying Act for an offence that is punishable neither on summary conviction nor on conviction on indictment.

[section 111A inserted by 1998:12 effective 31 March 1998, and repealed and substituted by 2004:6 s.15 effective 26 March 2004]

Penalties may be sued for in name of Attorney-General or Collector of Customs

112 All duties, surcharges, penalties and forfeitures incurred under or imposed by this Act, or any other Act relating to the importation of goods, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for, prosecuted, determined and recovered by action, information, or other appropriate proceeding in the Supreme Court in

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the name of the Attorney-General, the Director of Public Prosecutions or of the Collector of Customs, or by information in the name of the Collector of Customs by some customs officer authorized by him before a court of summary jurisdiction:

Provided that nothing in this section shall affect or derogate from the Admiralty jurisdiction of the Supreme Court.

[section 112 amended by 1999:8 s.3 & Sch 2 effective 1 April 1999]

Preferment of indictments or suits

113 All indictments or suits for any offences or the recovery of any penalties or forfeitures under this Act, or any amending Act, shall, except in the cases where summary jurisdiction is conferred upon a court of summary jurisdiction, be preferred or commenced in the name of the Attorney-General, the Director of Public Prosecutions or of the Collector of Customs.

[section 113 amended by 1999:8 s.3 & Sch 2 effective 1 April 1999]

Determination of penalties based on value of goods

114 In all cases where any penalty, the amount of which is at any time to be determined by the value of any goods, is authorized to be paid, or sued for under any Act relating to the revenue of Bermuda such value shall, as regards the payment of such penalty to the Collector of Customs, or as regards any proceedings in any court, be estimated and taken according to the real and true value of goods of the like sort or denomination, and upon which the duties of importation shall have been paid in Bermuda, at or about the time of the commission of the offence, and such real and true value shall be ascertained either by any mode which may be authorized by any court, taking cognizance of the matter, or by two competent persons to be appointed for that purpose by the Minister, which persons shall make a declaration in writing before the Collector of Customs, or the Assistant Collector of Customs, what is such real and true value.

Appropriation of penalties

115 (1) All penalties, surcharges and forfeitures recovered under this Act, or any other Act relating to the revenue of Bermuda, shall after deduction of all charges and costs incurred in relation to the custody of any goods or any prosecution or action arising under this Act, or any other Act as aforesaid, be payable into the Consolidated Fund in aid of the general revenue of Bermuda:

Provided that the Minister in special circumstances may direct any portion of any penalty or forfeiture, not exceeding in the whole one half thereof, to be paid to the person who seizes any goods liable to forfeiture under this Act, or who gives any information leading to such seizure, or to be divided between the person so seizing and the person so informing in such proportions as the Minister may determine.

[section 115 amended by 2007:13 s.24 effective 29 March 2007]

Legal proceedings to be commenced within three years

116 Any suit, indictment or information in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.

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Burden of proof in certain cases

117 If in any prosecution in respect of any goods seized for non-payment of duties, or of surcharges or any other cause of forfeiture, or for the recovering of any penalty or penalties, or of any surcharge under this Act, or any amending Act, any dispute arises whether the import duties have been paid in respect of such goods, or whether the goods have been lawfully un-shipped, or concerning the place whence such goods were brought, then in every such case the proof thereof shall be on the defendant in such prosecution; and the defendant shall be competent and compellable to give evidence.

Certificate of Collector of Customs to be evidence

118 In any proceedings under this Act for the recovery of any duty, surcharge, or penalty, a certificate purporting to be under the hand of the Collector of Customs certifying that such duty or surcharge is payable by any person on a date specified therein or that the whole or any part thereof remains unpaid as at a date specified therein, or that any person has been ordered to pay any penalty on a date specified therein, or that the whole or any part of such penalty remains unpaid as at a date specified therein, as the case may be, that there has or has not been any appeal against the imposition of such penalty and, if there has been an appeal, the date and the result thereof shall be receivable in evidence without further proof and shall be sufficient evidence of the facts specified therein.

Evidence in legal proceedings under Act

119 If upon any trial a question shall arise whether any person is an officer of Her Majesty's Forces, or a customs officer, his own evidence thereof, or other evidence of his having acted as such, shall be deemed sufficient, without production of his commission or warrant; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty.

Criminal proceedings before courts of summary jurisdiction

120 Without prejudice to any power or jurisdiction expressly conferred upon the Supreme Court or upon the Collector of Customs to deal with contraventions of this Act, proceedings in respect of any such contravention may be taken before a court of summary jurisdiction, and the court of summary jurisdiction may impose any monetary penalty or forfeiture allowed by the provisions of this Act to be imposed in respect of such contravention as though such penalty or forfeiture were a fine; and the Criminal Jurisdiction and Procedure Act 2015, shall have effect in respect to any such proceedings accordingly.

[Section 120 amended by 2015 : 38 s. 91 effective 6 November 2015]

Assessment of damages where seizure justified

121 When in any information or suit relating to any seizure a verdict or judgment is found for the claimant, if it appears to the court before which the information or suit was heard that there was reasonable or probable cause of seizure, and the presiding judge, or the magistrate composing the court so certifies on the record or information, such certificate

may be pleaded in bar to any action, indictment, or other proceeding against the seisor; and in case any action, indictment, or other proceeding is brought to trial against any person on account of any seizure, (whether any information is brought to trial for the condemnation of the same or not), and a verdict is given for the plaintiff, if the judge or magistrate composing the court, before whom such action, indictment, information or other proceeding is tried or heard, certifies on the record, information, or other written proceedings, that there was reasonable or probable cause for seizure, the plaintiff shall not be entitled to more than two cents damages, nor to any costs, nor shall the defendant be fined more than twelve cents, and the production of such certificate or a copy thereof verified by the signature of the Registrar, or of the magistrate composing the court which heard the cause, shall be sufficient evidence of such certificate.

Reviews and Appeals

Requirement for review of a decision

122 (1) Subject to subsection (10), this section applies to—

- (a) any decision by the Collector of Customs, in relation to any relevant duty, as to—
 - (i) whether or not, and at what time, anything is charged in any case with any such duty;
 - (ii) the rate at which any such duty is charged in any case, or the amount charged;
 - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
 - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty, or the amount of the relief, repayment, remission or drawback to which any person is entitled;
 - (b) any decision by the Collector of Customs or a proper officer that a person is liable to any civil penalty under any enactment, or as to the amount of his liability, as contained in any assessment under section 111A; or
 - (c) any decision by the Collector of Customs or any proper officer which is of a description specified in the Fourth Schedule to this Act.
- (2) Any person who is—
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies;
 - (b) a person in relation to whom, or on whose application, such a decision has been made; or

- (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates or are to be imposed or applied,

may by notice in writing to the Collector of Customs require him to review that decision.

(3) The Collector of Customs shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of thirty days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.

(4) For the purposes of subsection (3) it shall be the duty of the Collector of Customs to give written notification of any decision to which this section applies to any person who—

- (a) requests such a notification;
- (b) has not previously been given written notification of that decision; and
- (c) if given such a notification, will be entitled to require a review of the decision under this section.

(5) The Collector of Customs shall not be required under this section to review any decision falling within subsection (1)(a) if any amount is outstanding from the person requiring the review in respect of any liability of that person to pay any relevant duty to the Collector of Customs (including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Collector of Customs) unless—

- (a) the Collector of Customs has, on the application of the person requiring the review, issued a certificate stating either—
 - (i) that such security as appears to him to be adequate has been given to him for the payment of that amount; or
 - (ii) that, on grounds of the hardship that would otherwise be suffered by the person requiring the review, he either does not require the giving of security for the payment of that amount or has accepted such lesser security as he considers appropriate; or
- (b) the Tax Appeal Tribunal decides that the Collector of Customs should not have refused to issue a certificate under paragraph (a) and is satisfied that such security (if any) as it would have been reasonable for the Collector of Customs to accept in the circumstances has been given to the Collector of Customs.

(6) A person is entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—

- (a) the grounds on which he requires the further review are that the Collector of Customs did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- (b) he does not, on the further review, require the Collector of Customs to consider any facts or matters which were considered on a previous review

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

(7) If it appears to the Minister of Finance that there is a decision to be made for the purposes of—

- (a) this Act, the Customs Tariff Act 1970 or the outlying Acts; or
- (b) any Act or statutory instrument enacted for the purpose of implementing those Acts,

which are not decisions to which this section applies, the Minister may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1).

(8) Regulations under subsection (7) shall be subject to the negative resolution procedure and may—

- (a) provide, in relation to any description of decisions to which this section is applied by any such regulations, that section 122B(3) shall have effect as if those decisions were of a description specified in the Fourth Schedule to this Act; and
- (b) make such other incidental, supplemental, consequential and transitional provisions as the Minister thinks fit.

(9) In this section “relevant duty” means any import duty or export duty under the Customs Tariff Act 1970.

(10) This section does not apply to decisions made on a review under this section.

[section 122 amended by 1998:12 effective 31 March 1998; subsection (5) added by 2000:30 s.13 effective 8 November 2000; and section repealed and substituted by 2004:6 s.16 effective 26 March 2004]

Review procedure

122A (1) Where the Collector of Customs is required in accordance with this Act to review any decision, it shall be his duty to do so and he may, in that review, either—

- (a) confirm the decision; or
- (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as he may consider appropriate.

(2) Where—

- (a) it is the duty of the Collector of Customs in pursuance of a requirement by any person under section 122, to review any decision; and
- (b) he does not, within the period of thirty days beginning with the day on which the review was required, give notice to that person of his determination on the review;

he shall be assumed for the purposes of this Act to have confirmed the decision.

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(3) The person requiring the review and the Collector of Customs shall each bear their own costs of the review.

[section 122A inserted by 2004:6 s.16 effective 26 March 2004]

Appeals to the Tax Appeal Tribunal

122B (1) Subject to this section, an appeal in respect of—

- (a) any decision by the Collector of Customs on a review under section 122A (including a deemed confirmation under subsection (2) of that section);
- (b) any decision by the Collector of Customs on a review of a decision to which section 122 applies as the Collector of Customs has agreed to undertake in consequence of a request made after the end of the period mentioned in section 122(3); or
- (c) any decision by the Collector of Customs refusing to issue a certificate under section 122(5);

shall lie to the Tax Appeal Tribunal.

(2) An appeal under this section shall not be entertained unless the appellant is the person who requested the review in question.

(3) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal is satisfied that the Collector of Customs or other person making that decision could not reasonably have arrived at it, to do one or more of the following—

- (a) direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) require the Collector of Customs to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Collector of Customs as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when similar circumstances arise in future.

(4) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

(5) On an appeal under this section the burden of proof shall lie upon the appellant to show that the grounds on which any such appeal is brought have been established.

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(6) References in this section to a decision as to an ancillary matter are references to any decision of a description specified in the Fourth Schedule to this Act which is not comprised in a decision falling within section 122(1)(a) and (b).

[section 122B inserted by 2004:6 s.16 effective 26 March 2004]

Method of and time for appealing

122C A person who is dissatisfied with an appealable decision of the Collector of Customs may, within thirty days after service on him of notice of that decision, or after the date that the Collector of Customs is assumed for the purposes of this Act to have confirmed the reviewable decision, or within such further time as the Tribunal may allow, by notice in writing accompanied by such fee as may be prescribed under the Government Fees Act 1965, require the Collector of Customs to treat his notice as an appeal and to forward it to the Tribunal and the Collector of Customs shall, as soon as practicable, forward it accordingly.

[section 122C inserted by 2004:6 s.16 effective 26 March 2004]

Application of the Taxes Management Act 1976

122D (1) Subject to subsections (2), (3), (4), and (5) and section 122E, sections 26 to 29 of the Taxes Management Act 1976 and the Tax Appeal Tribunal Procedure Regulations 1981 apply to appeals against appealable decisions of the Collector of Customs as they apply to appeals against decisions of the person responsible under the Taxes Acts for the collection of the tax on an objection under section 23 of the Taxes Management Act 1976.

(2) In sections 26 to 29 of the Taxes Management Act 1976 and the Tax Appeal Tribunal Procedure Regulations 1981, with respect to appeals under section 122B, "Collector" means the Collector of Customs.

(3) In the Tax Appeal Tribunal Procedure Regulations 1981, with respect to appeals under section 122B, "assessment" includes any written notification of the reviewable decision.

(4) Every appeal shall be commenced by the appellant serving upon the Collector of Customs a notice of appeal in Form 1C in the Fifth Schedule.

(5) Notice of the hearing date of an appeal shall be given in Form 2C in the Fifth Schedule.

[section 122D inserted by 2004:6 s.16 effective 26 March 2004]

Regulations pertaining to appealable decisions

122E The Minister of Finance may by regulations subject to the negative resolution procedure make further modifications or alternative or additional provisions for the purpose of the practice and procedure of appeals against appealable decisions.

[section 122E inserted by 2004:6 s.16 effective 26 March 2004]

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Actions against customs officers

Notice of action against customs officer; time of action

123 (1) No action shall be commenced, nor shall any writ be sued out, against, nor a copy of any process served upon, any customs officer, or any person acting in his aid, for anything done in the exercise of his office, until one month after notice in writing has been delivered to him or left at his usual place of abode, by the counsel or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name of the counsel or agent, and no evidence of the cause of such action shall be produced except of such as is contained in such notice; and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given and in default of such proof the defendant shall recover in such action a verdict and costs.

(2) Every such action shall be brought within three months after the cause thereof, and the defendant may plead the general issue and give the special matter in evidence.

Tender of amends allowed to be made by defendant, and pleaded

124 Any customs officer, or other person acting in his aid, may for anything done in the exercise of his office, tender amends to the party complaining, or his agent, and may plead such tender in bar to any action, together with other pleas; and if the jury find the amends sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff is nonsuited, or discontinues his action, or judgment is given for the defendant upon demurrer, then the defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only:

Provided that the defendant may by leave of the court where such action is brought, at any time before issue is joined, pay money into court as in other actions.

Obligation of secrecy

125 (1) No customs officer and no other public officer acting in aid of a customs officer shall disclose directly to any person except—

- (a) the Minister or a person authorized by the Minister to be privy to the information; or
- (b) any officer of the Department; any information obtained by virtue of any provision of this Act, which shows or tends to show the value of any particular goods, or any particular consignment of goods, into Bermuda, or taken out of bond from any bonded warehouse.

(2) Without prejudice to any other action or proceedings which may be taken against him, any person who contravenes any of the foregoing provisions of this section commits an offence against this Act:

Punishment on summary conviction: a fine of the level 4 amount.

[section 125 subsection (2) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004; amended by 2007:13 effective 29 March 2007]

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FIRST SCHEDULE
CUSTOMS TRADERS: RECORD-KEEPING REQUIREMENTS

(Section 35B(3), 35C(2)(c) and 98A)

Application and interpretation

1 (1) This Schedule applies to any person carrying on a trade or business which consists of or includes any of the following activities—

- (a) importing or exporting any goods of a class or description subject to duty (whether or not in fact chargeable with duty);
- (b) producing, manufacturing or applying a process to them;
- (c) buying, selling or dealing in them;
- (d) handling, transporting or storing them;
- (e) facilitating any activity mentioned in sub-subparagraphs (a) to (d).

(2) In this Schedule—

- (a) “customs goods” means any goods mentioned in subparagraph (1)(a);
- (b) any reference to a customs trader is a reference to a person to whom this Schedule applies by virtue of subparagraph (1);
- (c) any reference to the business of a customs trader is a reference to the trade or business carried on by him as mentioned in subparagraph (1).

Customs trader's records

2 (1) A customs trader who receives, prepares or issues a record consisting of an item specified in subparagraph (3) relating to a business within the meaning of paragraph 1(2) (c) shall—

- (a) in the case of a received record, keep and preserve it;
- (b) in the case of an issued record, keep and preserve a copy of it; and
- (c) in the case of a record that is prepared or maintained and which has not been received or which is not issued, preserve it.

(2) A record required to be kept under subparagraph (1) shall be kept in Bermuda; and a record required to be preserved under subparagraph (1) shall be preserved for a period of six years or such lesser period as the Collector of Customs may permit beginning on the day the obligation to preserve arises.

(3) The following, being items that are received, prepared, maintained or issued, are specified—

- (a) an order

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- (b) an invoice
- (c) a delivery note
- (d) a credit note
- (e) a debit note
- (f) a record relating to an importation or an exportation
- (g) a statement of account
- (h) a record of payment or of receipt
- (i) a journal or ledger
- (j) a profit and loss account, trading account, management account, management report or balance sheet
- (k) an internal or an external auditor's report
- (l) a record relating to any drawback, remission, repayment or reimbursement of, or relief from, import or export duty
- (m) a record required, other than by virtue of this Schedule, by or under this Act or the Customs Tariff Act 1970
- (n) a stock record
- (o) any other record maintained for a trading or business purpose.

Other records

- 3 The Collector of Customs may require any customs trader—
- (a) to keep in Bermuda such other records as he may specify; and
 - (b) to preserve those records for a period of six years or such lesser period as the Collector of Customs may permit, beginning on the day that the obligation to preserve arises.

Information may be preserved by approved means

4 (1) A duty imposed under paragraph 2(1) or 3(b) to preserve records may be discharged by the preservation of the information contained in them by such means as the Collector of Customs may approve.

(2) On giving approval under subparagraph (1), the Collector of Customs may impose such reasonable requirements as appear to him necessary for securing that the information will be as readily available to him as if the records themselves had been preserved.

Records relating to customs declarations

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5 Where any record (including a copy of a record) is kept or preserved by a customs trader under a duty imposed by or under this Schedule, and that record relates to a customs declaration made by him or on his behalf, it shall be so kept or preserved as to be readily apparent that it does relate to that particular declaration.

Time of recording

6 Where a customs trader is required by or under this Schedule to keep a record, he shall do so at the time when any information that is by virtue of this Schedule to be recorded is first known to him or as soon as possible thereafter.

Records and rules of evidence

7 (1) Where any information is preserved by approved means as mentioned in paragraph 4(1), a copy of any document in which it is contained shall, subject to subparagraph (2) be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.

(2) A statement contained in a document produced by a computer shall not by virtue of subparagraph (1) be admissible in evidence in criminal proceedings, except in accordance with section 43B of the Evidence Act 1905.

Furnishing of information and production of documents

8 (1) A customs trader shall furnish the Collector of Customs, within such time and in such form as he may reasonably require, with such information relating to his business as he may reasonably specify.

(2) A customs trader shall, if required to do so by a customs officer duly authorised in writing by the Collector of Customs, produce or cause to be produced for inspection by the officer—

- (a) at that person's principal place of business or at such other place as the officer may reasonably require; and
- (b) at such time as the officer may reasonably require;

any documents which relate to his business.

(3) Where it appears to a customs officer duly authorised in writing by the Collector of Customs that any documents which relate to a business of a customs trader are in the possession of another person, the officer may require that other person, at such time and place as the officer may reasonably require, to produce those documents or cause them to be produced.

(4) For the purposes of this paragraph, the documents which relate to a business of a customs trader shall be taken to include any documents required to be kept by virtue of paragraph 2(1).

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(5) The officer may take copies of, or make extracts from, any document produced under this paragraph.

(6) If it appears to the officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under this paragraph.

(7) Where a document is removed under subparagraph (6)—

- (a) if the person from whom the document is removed so requests, he shall be given a record of what was removed;
- (b) if the document is reasonably required for the proper conduct of any business, the person by whom the document was produced or caused to be produced shall be provided as soon as practicable with a copy of the document free of charge;
- (c) if the document is lost or damaged, the Collector of Customs shall be liable to compensate the owner of it for any expenses reasonably incurred by him in replacing or repairing it.

(8) If a person claims a lien on any document produced by him under subparagraph (3)—

- (a) the production of the document shall be without prejudice to the lien; and
- (b) the removal of the document under subparagraph (6) shall not be regarded as breaking the lien.

Power of entry

9 Where a customs officer has reasonable cause to believe that—

- (a) any premises are used in connection with a business of a customs trader; and
- (b) any customs goods are on those premises;

he may at any reasonable time enter and inspect those premises and inspect any goods found on them.

Order for production of documents

10 (1) Where, on an application by a customs officer, a magistrate is satisfied that there are reasonable grounds for believing—

- (a) that an offence in connection with import or export duty of customs is being, has been or is about to be committed; and
- (b) that any information or documents which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person;

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he may make an order under this paragraph.

(2) An order under this paragraph is an order that the person who appears to the magistrate to be in possession of the information or documents to which the application relates shall—

- (a) furnish a customs officer with the information or produce the document;
- (b) permit a customs officer to take copies of or make extracts of any document produced; and
- (c) permit a customs officer to remove any document which he reasonably considers necessary;

not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify.

Procedure when documents are removed

11 (1) A customs officer who removes any document in the exercise of a power conferred under paragraph 10 shall, if so requested by a person showing himself—

- (a) to be the occupier of premises from which it was removed; or
- (b) to have had custody or control of it immediately before the removal;

provide that person with a record of what he removed.

[2] The officer shall provide the record within a reasonable time from the making of the request for it.

[3] Subject to subparagraph (7), if a request for permission to be granted access to any document which—

- (a) has been removed by a customs officer; and
- (b) is retained by the Collector of Customs for the purposes of investigating an offence;

is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a customs officer.

(4) Subject to subparagraph (7), if a request for a photograph or copy of any such document is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a customs officer for the purpose of photographing it or copying it; or

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(b) photograph or copy it, or cause it to be photographed or copied.

(5) Where any document is photographed or copied under subparagraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(6) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(7) There is no duty under this paragraph to grant access to, or to supply a photograph or copy of, any document if the officer in charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of the investigation of which the document was removed; or

(c) any criminal proceedings which may be brought as a result of—

(i) the investigation of which he is in charge; or

(ii) any such investigation as is mentioned in sub subparagraph (b).

(8) Any reference in this paragraph to the officer in charge of the investigation is a reference to the person whose name and address are endorsed on the order concerned as being the officer in charge of it.

Failure of customs officer to comply with requirements under paragraph 11

12 (1) Where, on an application made as mentioned in subparagraph (2), the magistrate is satisfied that a customs officer has failed to comply with a requirement imposed by paragraph 11, the magistrate may order that customs officer to comply with the requirement within such time and in such manner as may be specified in the order.

(2) An application under subparagraph (1) shall be made—

(a) in the case of a failure to comply with any of the requirements imposed by subparagraphs (1) and (2) of paragraph 11, by the occupier of the premises from which the document in question was removed or by the person who had custody or control of it immediately before it was so removed; and

(b) in any other case, by the person who had such custody or control.

(3) Any application for an order under this paragraph shall be made by way of complaint.

Failure to comply with requirements an offence

13 Any person who fails to comply with a requirement imposed under paragraph 2, 3, 4, 5, 6 and 8 shall be guilty of an offence and liable on summary conviction to a fine of the level 3 amount.

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[Schedule inserted by 2000:30 s.12 effective 8 November 2000; para 13 penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2 effective 26 March 2004]

[NB Schedule retitled First Schedule by 2004:6 s.17(a) effective 26 March 2004]

SECOND SCHEDULE

(Sections 11, 14 and 24)

RULES ON CUSTOMS VALUATION

Part 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Bermuda adjusted in accordance with the provisions of Part 8, provided:

- (a) that 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 by law or by the public authorities in Bermuda;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that 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 the provisions of Part 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Part 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the proper officer has grounds for considering that the relationship influenced the price, he shall communicate his grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

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- (ii) the customs value of identical or similar goods as determined under the provisions of Part 5;
- (iii) the customs value of identical or similar goods as determined under the provisions of Part 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Part 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Part 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Part 1, the customs value shall be the transaction value of identical goods sold for export to Bermuda and exported at or about the same time as the goods being valued.

(b) In applying this Part, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. *(number not used)*

3. If, in applying this Part, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Part 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Parts 1 and 2, the customs value shall be the transaction value of similar goods sold for export to Bermuda and exported at or about the same time as the goods being valued.

(b) In applying this Part, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or

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to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. *(number not used)*

3. If, in applying this Part, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Part 4

If the customs value of the imported goods cannot be determined under the provisions of Parts 1, 2 and 3, the customs value shall be determined under the provisions of Part 5 or, when the customs value cannot be determined under that Part, under the provisions of Part 6 except that, at the request of the importer, the order of application of Parts 5 and 6 shall be reversed.

Part 5

1. (a) If the imported goods or identical or similar imported goods are sold in Bermuda in the condition as imported, the customs value of the imported goods under the provisions of this Part shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Bermuda of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within Bermuda;
- (iii) the costs and charges referred to in paragraph 2 of Part 8; and
- (iv) the customs duties and other national taxes payable in Bermuda by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Bermuda in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in Bermuda in the condition as imported, then, if the importer so requests, the customs value 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 Bermuda who are not related to the

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persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).

Part 6

1. The customs value of imported goods under the provisions of this Part shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Bermuda.

2. No proper officer may require or compel any person not resident in Bermuda to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Part may be verified in another country by the Collector of Customs with the agreement of the producer and provided the Collector of Customs gives sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Part 7

1. If the customs value of the imported goods cannot be determined under the provisions of Parts 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 and of Article VII of GATT 1994 and on the basis of data available in Bermuda.

2. No customs value shall be determined under the provisions of this Part on the basis of:

- (a) the selling price in Bermuda of goods produced in Bermuda;
- (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 the provisions of Part 6;
- (e) the price of the goods for export to a country other than Bermuda;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

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3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Part and the method used to determine such value.

Part 8

1. In determining the customs value under the provisions of Part 1, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, 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) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at 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:
 - (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, design work, and plans and sketches undertaken elsewhere than in Bermuda and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, 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.

2. The following shall be excluded from the customs value:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

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3. Additions to the price actually paid or payable shall be made under this Part only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Part.

Part 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the Collector of Customs and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of Bermuda.

2. The conversion rate to be used shall be that in effect at the time of importation.

Part 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the Collector of Customs who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Parts 11 to 13 (numbers not used)

Part 14

The notes at the Annex to this Schedule form an integral part of this Schedule and the Parts of this Schedule are to be read and applied in conjunction with their respective notes.

Part 15

1. In this Schedule:

- (a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods; and
- (b) "produced" includes grown, manufactured and mined.

2. In this Schedule:

- (a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
- (b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The

quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

- (c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Part 8 because such elements were undertaken in Bermuda;
- (d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
- (e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Schedule "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.

4. For the purposes of this Schedule, persons shall be deemed to be related only if:
- (a) they are officers or directors of one another's businesses;
 - (b) they are legally recognized partners in business;
 - (c) they are employer and employee;
 - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (e) one of them directly or indirectly controls the other;
 - (f) both of them are directly or indirectly controlled by a third person;
 - (g) together they directly or indirectly control a third person; or
 - (h) they are members of the same family.

5. Persons who are associated in business 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 for the purposes of this Schedule if they fall within the criteria of paragraph 4.

Part 16

Upon written request, the importer shall have the right to an explanation in writing from the proper officer as to how the customs value of the importer's goods was determined.

Part 17

Nothing in this Schedule shall be construed as restricting or calling into question the rights of the proper officer to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Parts 1 through 7 define how the customs value of imported goods is to be determined under the provisions of this Schedule. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Part 1 and imported goods are to be valued in accordance with the provisions of this Part whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Part 1, it is to be determined by proceeding sequentially through the succeeding Parts to the first such Part under which the customs value can be determined. Except as provided in Part 4, it is only when the customs value cannot be determined under the provisions of a particular Part that the provisions of the next Part in the sequence can be used.

3. If the importer does not request that the order of Parts 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Part 6, the customs value is to be determined under the provisions of Part 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Parts 1 through 6 it is to be determined under the provisions of Part 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Schedule, the proper officer shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Part in question. For example, the determination of usual profit and general expenses under the provisions of Part 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of Bermuda. On the other hand, the determination of usual profit and general expenses under the provisions of Part 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of

production. As a further example, the determination of an element provided for in paragraph 1(b)(ii) of Part 8 undertaken in Bermuda would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of Bermuda.

Note to Part 1

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Part 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of Bermuda.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

5. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

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1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in Bermuda shall not result in rejection of the transaction value for the purposes of Part 1. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the

buyer and seller, although related under the provisions of Part 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the Collector of Customs and is therefore acceptable under the provisions of Part 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the proper officer has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Part 1.

Note to Part 2

1. In applying Part 2, the proper officer shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Part 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Part 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Part 2 is not appropriate.

Note to Part 3

1. In applying Part 3, the proper officer shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

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3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Part 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraph 1(b), which has already been accepted under Part 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Part 3 is not appropriate.

Note to Part 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

| <i>Sale quantity</i> | <i>Unit price</i> | <i>Number of sales</i> | <i>Total quantity sold at each price</i> |
|----------------------|-------------------|---|--|
| 1-10 units | 100 | 10 sales of 5 units 5 sales of 3 units | 65 |
| 11-25 units | 95 | 5 sales of 11 units | 55 |
| over 25 units | 90 | 1 sale of 30 units 1 sale of 50 units | 80 |

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

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4. A third example would be the following situation where various quantities are sold at various prices.

| <i>^{^PRIVATE ^}^(a) Sales</i> | |
|--------------------------------|-------------------|
| <i>Sale quantity</i> | <i>Unit price</i> |
| 40 units | 100 |
| 30 units | 90 |
| 15 units | 100 |
| 50 units | 95 |
| 25 units | 105 |
| 35 units | 90 |
| 5 units | 100 |

| <i>^{^PRIVATE ^}^(b) Totals</i> | |
|---------------------------------|-------------------|
| <i>Total quantity sold</i> | <i>Unit price</i> |
| 65 | 90 |
| 50 | 95 |
| 60 | 100 |
| 25 | 105 |

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in Bermuda, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Part 8, should not be taken into account in establishing the unit price for the purposes of Part 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Part 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in Bermuda of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Part 5 shall be deducted under the provisions of paragraph 1(a)(i) of Part 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Part 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by

reference to the circumstances involved. Sales in Bermuda of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Part 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1(b) of Part 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Part 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 2 of Part 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in Bermuda that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Part 6

1. As a general rule, customs value is determined under this Schedule on the basis of information readily available in Bermuda. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside Bermuda. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of Bermuda. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the Collector of Customs the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Part 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a) (ii) and (iii) of Part 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Part 8, of any element specified in paragraph 1(b) of Part 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv)

of Part 8 which are undertaken in Bermuda shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Part 6 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Bermuda.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in Bermuda and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in Bermuda and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Bermuda, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the proper officer shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Part 10.

7. The "general expenses" referred to in paragraph 1(b) of Part 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Part 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Part 6, sales for export to Bermuda of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Part 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Part 7

1. Customs values determined under the provisions of Part 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Part 7 should be those laid down in Parts 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Part 7.

3. Some examples of reasonable flexibility are as follows:

- (a) *Identical goods* - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Parts 5 and 6 could be used.
- (b) *Similar goods* - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Parts 5 and 6 could be used.
- (c) *Deductive method* - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Part 5 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Part 8

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Part 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer,

regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the proper officer to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Part 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and the Collector of Customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside Bermuda in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Part 8.

5. In another case, a firm may carry the cost of the design centre outside Bermuda as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Part 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

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6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside Bermuda.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Part 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in Bermuda shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to Bermuda of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Part 8, the transaction value cannot be determined under the provisions of Part 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in Bermuda of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Part 15

Paragraph 4

For the purposes of Part 15, the term "persons" includes a legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Schedule, 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.

Note to Part 17

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Part 17 recognizes that in applying this Schedule, the proper officer may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to him for customs valuation purposes. The Part thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. The proper officer has the right to expect the full cooperation of importers in these enquiries.

[Second Schedule inserted by 2004:6 s.17 effective 26 March 2004; amended in Paragraph 2 of Part 9 by 2008:14 s.13 effective 25 March 2008]

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THIRD SCHEDULE

(Section 84A)

STANDARD SCALE OF PENALTIES

| <i>Level on the scale</i> | <i>Monetary amount of penalty</i> |
|---------------------------|-----------------------------------|
| 1 | \$1,000.00 |
| 2 | \$2,000.00 |
| 3 | \$6,000.00 |
| 4 | \$12,000.00 |
| 5 | \$30,000.00 |
| 6 | \$50,000.00 |
| 7 | \$100,000.00 |

[Third Schedule inserted by 2004:6 s.17 effective 26 March 2004]

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FOURTH SCHEDULE

(Section 122, 122B)

REVIEWABLE DECISIONS SUBJECT TO SUPERVISORY JURISDICTION ON APPEAL

1. Decisions under paragraphs (a) to (e), made for the purposes of the Revenue Act 1898—

- (a) any decision as to whether anything is liable to forfeiture or as to whether anything forfeited or seized under the Revenue Act 1898 is to be restored to any person or as to the conditions subject to which any such thing is so restored;
- (b) any decision to withhold the certificate of clearance of a ship bound from Bermuda (section 7(4));
- (c) any decision to refuse delivery of any goods (section 19(2));
- (d) any decision relating to the grant of an application for authorisation to use simplified procedures, the conditions of the authorisation or revocation of the authorisation (sections 35C and 35F(1) and (2)); and
- (e) any decision relating to specific records to be kept, the period for which records are required to be preserved, or the securing of information (paragraphs 2(2), 3(a), 3(b) and 4(2) of the First Schedule).

2. Any decision under section 13(3) of the Customs Tariff Act 1970 refusing an application for approval to use or dispose of goods in respect of which relief was granted.

3. Any decision under section 7 of the Consular Relations Act 1971 making arrangements for securing a refund of customs duty or imposing any conditions subject to which any refund is to be made.

4. Any decision under section 7(2) of the Hotels Concession Act 2000 refusing an application for approval to use or dispose of goods in respect of which relief has been granted.

[Fourth Schedule inserted by 2004:6 s.17 effective 26 March 2004; paragraph 1(d) amended by 2007:13 s.25 effective 29 March 2007]

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FIFTH SCHEDULE

(Section 122D)

APPEAL TRIBUNAL FORMS

GOVERNMENT OF BERMUDA FORM 1C (REG. 4 MODIFIED BY SECTION 122C OF THE REVENUE ACT 1898)

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TAX APPEAL TRIBUNAL PROCEDURE REGULATIONS 1981

Tax Appeal No. of

Notice of Appeal

To: The Collector of Customs

TAKE NOTICE THAT I¹ of² require you to treat this notice as an appeal against the appealable decision dated the³ and to forward it to the Tax Appeal Tribunal.

I enclose herewith a statement of the appellant's case in accordance with Regulation 5 of the Tax Appeal Tribunal Procedure Regulations 1981.

Dated this [blank] day of [blank] 20 [blank]

.....
Signature of appellant or
his duly authorized representative.

Government of Bermuda Form 2C (Reg. 10 modified by section 122C of the Revenue Act 1898)

REVENUE ACT 1898

TAX APPEAL TRIBUNAL PROCEDURE REGULATIONS 1981

In the Tax Appeal Tribunal

Tax Appeal No. of

[blank] Appellant
vs
[blank] Respondent

1 Full name of appellant.

2 Full address of the appellant.

3 Date of the decision on a review or deemed confirmation.

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NOTICE IS HEREBY GIVEN that the appeal in the above matter will be heard at [blank] o'clock in the fore/afternoon on the [blank] day of [blank] 20 [blank] at Hamilton, and that you may appear in person or by your duly authorized representative; in the event, however, of your failing to appear personally or by your representative, the Tax Appeal Tribunal may proceed to hear and determine the appeal in your absence.

Dated this [blank] day of [blank] 20 [blank]

.....
Chairman,
Tax Appeal Tribunal

[Fifth Schedule inserted by 2004:6 s.17 effective 26 March 2004]

[Assent Date: 24 October 1898]

[This Act was brought into operation on 1 January 1899 by the original section 137 of this Act and though originally of limited duration, was continued in force indefinitely by 1919:38.]

Amended by:

1900 : 26

1900 : 40

1922 : 14

1922 : 22

1925 : 26

1927 : 12

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1947 : 15

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1951 : 98
1951 : 105
1952 : 3
1952 : 11
1952 : 22
1952 : 44
1954 : 8
1954 : 27
1954 : 31
1955 : 97
1959 : 10
1961 : 85
1963 : 190
1964 : 213
1965 : 185
1966 : 103
1968 : 1
1968 : 48
1971 : 83
1972 : 94
1973 : 30
1973 : 100
1977 : 35
1985 : 16
1987 : 30
1987 : 55
1988 : 28
1994 : 7
1995 : 4
1997 : 37
1998 : 12
1999 : 8
2000 : 30
2002 : 6
2004 : 6
2006 : 5
2007 : 13
2008 : 13
2008 : 14
2011 : 5
2011 : 38
2012 : 3
2012 : 16
2013 : 8

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2014 : 16
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