

## IMPORTS AND EXPORTS ACT, 1986

## Principal Act

<b>Act. No. 1986-21</b>	<i>Commencement</i>	1.1.1987
	<i>Assent</i>	21.11.1987
<b>Amending enactments</b>	<b>Relevant current provisions</b>	<b>Commencement date</b>
Act. 1987-06	s. 74(1)(a) , (2), Sch. 2	1.1.1987
1987-16	Sch. 1	28.4.1987
1987-36	Sch. 1	24.12.1987
1989-03	s. 73(1)	2.3.1989
1989-22	ss. 2(1), 63	10.8.1989
1990-01	ss. 49, 62(b), 74, 85, 112, 120, 124(a), Sch. 2	22.2.1990
LN. 1990/021	Sch. 1	22.2.1990
Act. 1990-44	s. 112(1)	15.11.1990
1991-15	s. 66(c)-(d)	1.1.1991
“	ss. 4(3)(a)-(b), 14(2), 15(a)(i)-(ii), (b)(i), 16(2), 20(1), 21(3), 24(3), 25(3), 30(4), 31(2), 33(4), 41(3), 64, 79(3), 80(a)(i)-(ii), (b)(i), 83(5), 84(3), 92(3), 93(3), 94(2), 102(a)-(b), 103(i)-(ii), 104(a)-(b), 105(i)-(ii), (iii)(a)-(b), (iv)(a), 106, 108, 109(a)-(b), 110(i)-(ii), 117(2), 125(6), 129	12.9.1991
“	ss. 45(1), (3), 52(1)	1.3.1993
1993-10	ss. 2(1), 3(1)-(3), 4(1)-(2), 8(2)(c)-(d), 10, 13, 14(1)(c), 18(1)(a)-(c), (5), 20(1)(a), (2), 24(1)(b), 28(1)-(2), 29, 34(1)(b)-(d), (2), 38, 56(b), 57(2), 58(1), 67(1), 72(1)-(2), 73(1)-(4), 77, 81(5), 83(1)(b), (4), 109(4), 112(1)	1.3.1993
1993-10	ss. 22(3)-(4), 23(1)-(2), 27, 32(1)-(2), 35, 36(1)-(2), 39-40, 43-44, 50, 53, 55, 62, (b), 90, 98(1), 105(a), 113, 128(a), 129(b), (e)-(f)	15.3.1993

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1993-23	ss. 8(2)-(7), 9(2)	9.12.1993
1995-04	ss. 2(1), 15(b)(ii), (c), 80(b)(ii), (c)	9.3.1995
1997-34	s. 91	13.11.1997
1996-07	s. 119A	14.1.1999
2001-15	ss. 91A-91B	6.6.2001
2004-12	s. 9A	15.7.2004
2005-61	s. 91B(2)	8.12.2005
2006-46	ss. 25A, 92(1)	21.12.2006
2007-16	ss. 76-78	6.6.2007
2007-17	ss. 12, 16(1), 20(1), 50, 62, 66, 71(1), 72(1), 74, 79(1), 96(1)- (2), 118, 129, 130, Sch. 3, Part XI heading	14.6.2007
2009-26	s. 64(d)	26.6.2007
2013-19	s. 64(d)	24.6.2013
LN. 2017/223	ss. 91C-91O	16.11.2017

**English Sources:**

Customs and Excise Act, 1952 (1952 c.44)

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**PART I.**  
PRELIMINARY.

**Short title and commencement.**

- 1.(1) This Act may be cited as the Imports and Exports Act, 1986.
- (2) This Act shall come into operation on the 1st day of January, 1987.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires—

“**airport**” means the airport at North Front;

“**alcohol strength by volume**” means the number of volumes of pure alcohol contained at the temperature of 20°C in 100 volumes of the product at that temperature;

“**% volume**” means alcohol strength by volume;

“**approved place**” means a place approved by the Collector which is not under the control of a Customs Officer but is operated in accordance with the instructions of the Collector;

“**approved processing zone**” means an area where goods may be stored, processed, manufactured, imported or exported and in which they may be processed or used for manufacturing;

“**bicycle**” means a vehicle intended to be operated by pedals having two or three wheels, and includes a power assisted bicycle;

“**Collector**” means the Collector of Customs appointed under section 3;

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

“**customs officer**” means an officer appointed under section 3 to assist the Collector in carrying out the provisions of this Act, and includes the Collector;

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“**driving**” in relation to vehicles, including controlling;

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

“**entered**” in relation to goods imported, stored, put on board a ship or aircraft as stores, or exported, means the acceptance and signature by a customs officer of an entry, specification, shipping bill or bill of sight signed by the importer or exporter on the prescribed form in the prescribed manner together with the payment to the customs officer by the importer or exporter of all fees and charges due to the Government in respect of the goods;

“**examination station**” has the meaning given to it by section 10;

“**exporter**” in relation to goods for exportation or for use as stores, includes the shipper of the goods and every person performing in relation to an aircraft or a vehicle functions corresponding with those of a shipper;

“**goods**” includes stores and baggage, and all kinds of movable and personal property, and animals;

“**hulk**” includes any dismantled ship or other craft of such or the like nature afloat, or being within the port;

“**importer**”, in relation to any goods at any time between their importation and the time when they are delivered out of customs control, includes any owner or other person for the time being possessed of or beneficially interested in the goods;

“**liqueurs and cordials**” include all potable mixtures not otherwise enumerated containing spirits and irrespective of strength;

“**malt liquors**” include ale, porter, beer, and spruce;

“**master**” in relation to a ship, includes any person having or taking the charge or command of the ship;

“**mechanical lighter**” means any mechanical or chemical contrivance which is portable and is intended for producing a spark or flame;

“**motor spirit**” includes benzine, benzoline, gasolene, naphtha and petrol spirits generally;

“**motor vehicle**” means a mechanically propelled vehicle intended or adapted for use on roads, having two or more wheels, whether driven by an internal combustion engine, or by steam, or electricity, or by any other source of power and includes a motor cycle and a motor cycle with a side car attached but does not include a power-assisted bicycle;

“**North Mole**” means any part of the North Mole, the jetties abutting thereon and the western arm thereof, for the time being occupied by the Government;

“**operator**” means an operator licensed under the Traffic Act;

“**per cent**” and the symbol % mean per cent of the value ascertained according to section 59;

“**perfumed spirit**”, in addition to its ordinary meaning, includes all non-potable mixtures or compounds not otherwise enumerated containing spirits, irrespective of strength, and every description of prepared scent;

“**prohibited imports**” means goods the importation of which is prohibited by section 14 or by regulations made under section 16;

“**receptacle**” includes any bundle or package and any container, box, cask or other receptacle whatsoever;

“**sell**” includes offer for sale and expose for the purpose of sale;

“**Scheduled Substance**” means any substance appearing for the time being in Schedule 4 to the Drugs Misuse Act<sup>1</sup>;

“**ship**” means anything made or used for the conveyance by water of human beings or property, and includes a hovercraft;

“**specification**” means an entry outward in respect of goods exported from Gibraltar;

“**spirits**” includes low wines and all liquors mixed with spirits, and all mixtures, compounds or preparations made with spirits and intended for consumption, and also alcohol of any description;

“**store**” means to keep in some selected place for future use;

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<sup>1</sup> 1973-06.

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“**tons register**” means the tons of a ship’s net tonnage as ascertained and registered according to the tonnage regulations of the relevant legislation or, in the case of a ship which is not registered under that Act, ascertained in like manner as if it were so registered;

“**trailer**” means a vehicle drawn by a motor vehicle;

“**transit or transshipment**” in relation to entry of goods, means transit through Gibraltar or transshipment with a view to the re-exportation of the goods in question;

“**transit shed**” means a shed for the time being approved by the Collector under section 28;

“**vehicle**” includes a motor vehicle, a motorcycle, a trailer, a bicycle, hackney carriage or other vehicle drawn by an animal and, in such case, includes the animal.

(2) For the purposes of this Act, a person shall be treated as being normally resident in the country where he usually lives—

- (a) for a period of, or periods together amounting to, at least 185 days in a period of 12 months;
- (b) because of his occupational ties; and
- (c) because of his personal ties.

(3) In subsection (2)—

“**occupational ties**” does not include attendance by a pupil or student at a school, college or university; and

“**personal ties**” means family or social ties to which a person devotes most of his time not devoted to occupational ties.

(4) In the case of a person with no occupational ties, subsection (2) shall apply with the omission of paragraph (b), provided his personal ties show close links with that country.

(5) Where a person has his occupational ties in one country and his personal ties in another country, he shall be treated as being normally resident in the latter country, provided that either—

- (a) his stay in the former country is in order to carry out a task of a definite duration; or

- (b) he returns regularly to the country where he has his personal ties.

**PART II.**  
**ADMINISTRATION.**

*Appointments.*

**Appointment of Collector and customs officers**

3. (1) The person appointed as Collector of Customs shall be responsible for the administration of this Act and for levying, collecting and accounting for of all duties, fees and charges imposed thereunder.

(2) The Collector may, by writing under his hand, delegate all or any of his powers under this Act to such customs officers or other persons as he may think fit.

*Powers of Customs Officers.*

**Power to require information.**

4. (1) A customs officer may require any person concerned with the importation or exportation of goods of which an entry or specification is required by or under this Act, or any person concerned in the carriage, loading, unloading or storage of goods which are being or have been imported or exported, to furnish in such form as the officer may require any information relating to the goods and to produce and allow the officer to inspect and take extracts from or make copies of any invoice, bill of lading, book of account or other book or document whatsoever relating to the goods.

(2) Every person upon whom a duty to produce is imposed by subsection (1) shall retain all invoices, bills of lading, books of account and other books and documents relating to the goods for a period of not less than three years after the importation or exportation of the goods or the payment of any duty thereon, whichever is the later.

(3) A person who fails to comply with any requirement of this section is guilty of an offence and is liable on summary conviction—

- (a) where the offence is against subsection (1), to a fine at level 3 on the standard scale;

- (b) where the offence is against subsection (2), to a fine at level 4 on the standard scale.

## **Power to take samples.**

5.(1) A customs officer may, on the entry of any goods or at any time before or afterwards, without payment to the owner thereof, take samples of such goods for examination or for ascertaining the amount of duty payable on the same or for such other purpose as may be deemed necessary.

(2) Such samples may be disposed of or accounted for in such manner as the Collector may direct.

## **Right of access, etc.**

6. Without prejudice to any power conferred by this Act, every customs officer shall have free access to every part of any ship or aircraft at the port or airport and of any vehicle brought to an examination station and may—

- (a) cause any goods to be marked before they are unloaded from that ship, aircraft or vehicle;
- (b) lock up, seal, mark or otherwise secure any goods carried in the ship, aircraft or vehicle or any place or receptacle in which they are so carried; or
- (c) break open any place or receptacle which is locked and of which the keys are withheld.

## **Power to search ships, aircraft and vehicles.**

7.(1) Without prejudice to any other power conferred by this or any other Act, where there are reasonable grounds to suspect that any ship, aircraft or vehicle is or may be carrying any goods which are—

- (a) chargeable with any duty which has not been paid or secured; or
- (b) in the course of being unlawfully removed from or to any place; or
- (c) goods the importation or exportation of which is prohibited or restricted by this or any other Act; or
- (d) otherwise liable to forfeiture under this Act,

any customs officer or member of Her Majesty's Forces may stop, where it is necessary and practicable, and may search any ship, aircraft or vehicle.

(2) A person in charge of a ship, aircraft or vehicle who refuses to stop or to permit the ship, aircraft or vehicle to be searched when so required by a customs officer is guilty of an offence.

**Power to search.**

8. (1) Where there are reasonable grounds to suspect that any person to whom this section applies is carrying any article—

- (a) which is chargeable with any duty which has not been paid or secured; or
- (b) the importation or exportation of which is prohibited or restricted by this or any other Act,

any customs officer may search him and any article he has with him:

Provided that no person shall be searched except by an officer of the same sex.

(2) Subject to the following provisions of this section, if a customs officer of at least the rank of Customs Surveyor has reasonable grounds for believing that a person who is being detained by customs—

- (a) may have a Class A drug concealed on him; and
- (b) was in possession of it with the intention to commit an offence under this Act or the Drugs (Misuse) Act before his detention,

the officer may authorise an internal search of that person.

(3) A customs officer may not authorise an internal search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being so searched.

(4) An officer may give an authorisation under subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) An internal search shall be by way of examination by a suitably qualified person, that is to say, a registered medical practitioner or a registered nurse, and no internal search may be carried out except at—



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- (a) the premises designated for this purpose by the Collector;
- (b) a hospital;
- (c) a registered medical practitioner's surgery; or
- (d) some other place used for medical purposes.

(6) If an internal search of a person is carried out, the detention record relating to that person shall state which parts of his body were searched and that information shall be recorded as soon as practicable after the completion of the search.

(7) A customs officer may seize and retain anything which is found on an internal search of a person, or cause any such thing to be seized and retained if he has reasonable grounds for believing that it may be evidence relating to an offence, and where anything is seized under this subsection, the person from whom it is seized shall be told of the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

## **Power of arrest and detention.**

9.(1) A customs officer shall have power to arrest any person who has, in his opinion, committed or attempts to commit an offence against this Act or any regulation made thereunder or whom there are reasonable grounds to suspect of having committed or attempted to commit any such offence.

(2) A person who has been arrested under this section shall be handed over into the charge of a police officer as soon as practicable.

Provided that where the person is being detained on suspicion of having committed an offence relating to a Class A or a Class B drug and there are reasonable grounds to suspect that that person has that drug concealed on him, an officer of at least the rank of Customs Surveyor may authorise that that person be kept in the custody of customs officers for a period not exceeding 96 hours.

## **Customs officers may be armed.**

9A. A customs officer, when engaged in the performance of any duty or the exercise of any power imposed or conferred on him by or under this or any

other Act, may, if specifically authorised by the Collector of Customs with the written consent of the Chief Secretary, be armed with a truncheon.

*Examination Stations.*

**Examination stations.**

10. The Collector may approve, for such periods and subject to such conditions and restrictions as he may think fit, a part of or a place at the port or the airport or at Four Corners or at such other place as he may determine, for the loading and unloading of goods, the embarkation and disembarkation of passengers, the examination of baggage and the collection of duty, and such part or place is referred to in this Act as an examination station.

*Duty to Assist Enforcement.*

**Assistance to be rendered by police.**

11. It shall be the duty of every police officer to assist in the enforcement of this Act and any regulations for the time being in force thereunder.

**PART III.**

INTERNATIONAL CO-OPERATION.

**Power to give effect to treaties and conventions.**

12. Where by virtue of the provisions of any treaty or convention which applies to Gibraltar, relief from duty is to be granted in respect of any goods which are imported in accordance with such treaty or convention, the Government may, by order, exempt such goods from duty on entry into Gibraltar.

**Reciprocity within the Community.**

13. For the purpose of implementing Community obligations applicable to Gibraltar, the Collector shall co-operate with other customs services on matters of mutual concern and, without prejudice to the foregoing, may for that purpose give effect to any reciprocal arrangements made between member States, with or without other countries or territories, for securing, by the exchange of information or otherwise, the due administration of their customs laws and the prevention or detection of fraud or evasion.

**PART IV.**

CONTROL OF IMPORTS.

*Prohibited Imports.*

## Prohibited imports.

14. (1) No person shall import—

- (a) false money and counterfeit sterling, coin of the realm or any money purporting to be such not being of the established standard in weight or fineness;
- (b) indecent or obscene prints, paintings, books, cards, lithographic or other engravings, or films or video cassettes, or any other indecent or obscene articles;
- (d) matches in the manufacture of which white phosphorous has been used;
- (c) *Revoked.*
- (e) any article marked without the authority of Her Majesty with the Royal Arms or monogram of arms or monograms so closely resembling the same as to be calculated to deceive; or
- (f) any other goods the importation of which is prohibited by or under the authority of this Act or of any law for the time being in force in Gibraltar.

(2) A person who imports any goods contrary to the provisions of subsection (1) or who is in any way knowingly concerned with any such importation is guilty of an offence and is liable on summary conviction to a fine of three times the value of the goods or at level 5 on the standard scale, whichever is the greater.

## Controlled drugs Act 1997-06.

15. A person who imports goods comprising or including a controlled drug or Scheduled Substance contrary to the provisions of the Drugs (Misuse) Act, or who is in any way knowingly concerned with any such importation is guilty of an offence and is liable—

- (a) where the drug is a Class A or Class B drug—
  - (i) on summary conviction, to a fine at level 5 on the standard scale and to imprisonment for 12 months;
  - (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment, in the case

where the goods were a Class A drug, for life or, where the goods were a Class B drug, for 14 years;

- (b) where the drug is a Class C drug—
  - (i) on summary conviction, to a fine at level 4 on the standard scale and to imprisonment for 6 months;
  - (ii) on conviction on indictment to a fine of such amount as the court may determine and to imprisonment for 5 years;
- (c) where it is a Scheduled Substance—
  - (i) on summary conviction to a fine at level 4 on the standard scale and to imprisonment for six months;
  - (ii) on conviction on indictment to a fine of such amount as the Court may determine and to imprisonment for five years.

**Power for Government to prohibit or restrict imports.**

16. (1) The Government may, if he thinks fit, from time to time, by regulations prohibit, restrict or regulate the importation of goods or class of goods.

- (2) A person who—
  - (a) imports any goods the importation of which is prohibited; or
  - (b) imports any goods the importation of which is restricted or regulated except in accordance with the restriction or regulation applicable,

whether such importation is prohibited, restricted or regulated under this Act or under any other law, is guilty of an offence and is liable, on summary conviction, to a fine of three times the value of the goods or at level 4 on the standard scale, whichever is the greater.

*Report of Cargo and Entry of Goods.*

**Interpretation of sections 21 and 23.**

17. In this section and in sections 21 and 23,

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- (a) the expression “the relevant date” means the date when report was made of the importing ship or aircraft under section 18 or, where no such report was made, the date when it should properly have been made, and, in the case of goods imported by road, means the date when the vehicle carrying them arrived at Four Corners:

Provided that where any restriction is placed upon the unloading of goods from any ship or aircraft by virtue of any epidemic and infectious diseases, “the relevant date” in relation to that ship or aircraft means the date of the removal of the restriction; and

- (b) the expression “the relevant period” means, in the case of goods imported by air, a period of seven clear days from the relevant date and, in any other case, a period of fourteen clear days from the relevant date.

## **Inward manifests, etc.**

18. (1) The master or agent of every ship, the driver, operator or agent of any vehicle and the commander or agent of any aircraft arriving in Gibraltar shall, if such ship, vehicle or aircraft is carrying cargo—

- (a) within twenty-four hours after arrival, make report of the ship, vehicle or aircraft and her cargo by delivering to a customs officer an inward manifest of goods on board duly signed by the master, driver or operator, commander or agent, as the case may be;
- (b) answer all questions which may be put by a customs officer relating to the ship, vehicle or aircraft the cargo, crew, passengers, stores, journey or voyage; and
- (c) produce and deliver any document relating to the ship, vehicle or aircraft and the cargo, crew, passengers or stores, whether or not in transit and irrespective of the tonnage of the ship, which may be required by a customs officer.

(2) In the case of a ship of over 1,000 net tons, the manifest required under the provisions of subsection (1)(a) shall relate only to such cargo as is to be landed or transshipped in Gibraltar.

(3) The manifest shall contain the following particulars—

- (a) the name of the consignor;

- (b) the name of the consignee;
- (c) the marks and numbers of the packages;
- (d) the number and kind of packages;
- (e) the description of the goods; and
- (f) such other particulars as may be prescribed by regulations.

(4) For the purposes of this section “cargo” does not include goods shipped as stores for consumption on board.

(5) A master, driver or operator, commander or agent who fails to comply with the provisions of subsection (1) is guilty of an offence.

#### **Unloading from ships, aircraft and vehicles.**

19. (1) Except with the approval of the Collector, no goods shall be unloaded from any ship, aircraft or vehicle arriving from any place outside Gibraltar unless a report of the cargo in such ship, aircraft or vehicle has been made to a customs officer in accordance with the provisions of section 18.

(2) No goods shall be transshipped in Gibraltar unless authority for the transshipment has first been given by a customs officer.

#### **Places for unloading, etc.**

20. (1) Save with the approval of the Collector, goods arriving from any place outside Gibraltar—

- (a) by sea, shall not be unloaded at any place other than the public quay at Waterport or the North Mole or such other place as the Collector may determine;
- (b) by air, shall not be unloaded at any place other than the airport;
- (c) by land, shall not be imported otherwise than through the examination station at Four Corners;

Provided that the Government may by notice specify in relation to a particular class of goods or to goods in general some other place in addition to or instead of, in relation to paragraph (a), Waterport or the North Mole or, in relation to paragraph (c) Four Corners, and where the Government has by

notice so specified references to Waterport and the North Mole or Four, as the case may be, in this Act shall be deemed to be references to that other place in addition to or instead of Waterport, the North Mole or Four Corners as shall be specified in the notice.

(2) Save with the approval of the Collector, no dutiable goods, whether or not in transit as defined by section 63, on which duty has not been paid shall be unloaded from any ship at any place in Gibraltar other than the public quay at Waterport or the North Mole, whether or not such goods have previously been landed in Gibraltar.

(3) A person who unloads or imports any goods in contravention of the provisions of this section is guilty of an offence.

### **Requirement of and time for entry.**

21. (1) Subject to the provisions of sections 24 and 26, a person who imports any goods shall, within the relevant period, deliver to a customs officer an entry thereof in such form and manner and containing such particulars as may be prescribed.

- (2) Goods may be entered under this section—
- (a) for home use, if so eligible; or
  - (b) for storage; or
  - (c) for transit or transshipment; or
  - (d) for inward processing; or
  - (e) in such cases as the Collector may permit, for temporary retention with a view to subsequent re-exportation.

Provided that the Collector may direct that goods of any class or description specified in the direction shall not be entered for storage.

(3) Without prejudice to any liability under any other provision of this Act, a person who fails to make entry of any goods in accordance with the requirements of this Act and any regulations made thereunder is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

### **Entry by bill of sight.**

22. (1) Where, for lack of information, an importer is unable at the time of importation to make perfect entry of any goods, he may, after signing a declaration to that effect before a customs officer, deliver to that officer an entry of the goods by bill of sight in such form and containing such particulars as the Collector may require.

(2) An entry of any goods by bill of sight under subsection (1), when signed by the customs officer, shall be the warrant for the examination of the goods by the importer in the presence of the officer with a view to making perfect entry thereof.

(3) and (4). *Revoked by 93-10*

**Failure to deliver entry or to produce goods for clearance.**

23. (1) Wherein the case of any imported goods—

- (a) entry thereof has not been made by the expiration of the relevant period; or
- (b) at the expiration of 21 clear days from the relevant date, entry having been made of the goods, they have not been unloaded from the importing ship or aircraft or, in the case of goods which have been unloaded or which have been imported by land, have not been produced for examination and clearance,

a custom officer may cause the goods to be deposited in an approved transit shed or, if in the opinion of the Collector they are of a perishable nature, may cause them to be sold.

(2) Notwithstanding anything contained in subsection (1), where any small package or consignment of goods is imported, a customs officer may at any time after the relevant date cause that package or consignment to be deposited in an approved transit shed to await entry.

*Passengers' Baggage.*

**Declaration of dutiable goods.**

24. (1) Every person entering or leaving Gibraltar shall, at such place and in such manner as the Collector may direct, declare everything contained in his baggage or carried with him which—

- (a) he has obtained outside Gibraltar; or



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- (b) being dutiable goods, he has obtained in Gibraltar without payment of duty or without payment of duty at the rate specified in the Integrated Tariff provided for by section 45,

and in respect of which he is not entitled to exemption from payment under any law.

- (2) Every person entering or leaving Gibraltar shall—
  - (a) answer such questions as a customs officer may put him with respect to his baggage and anything contained therein or carried with him; and
  - (b) if required to do so by a customs officer, produce that baggage and any such thing for examination at such place as the customs officer may direct.

(3) A person who fails to declare anything or to produce any baggage or thing as required by this section is guilty of an offence and is liable on summary conviction to a fine of three times the value of the thing not declared or of the baggage or thing not produced, as the case may be, or one half of the amount at level 4 on the standard scale, whichever is the greater.

## **Opening of receptacles for examination.**

25. (1) A customs officer may require any person bringing any goods whatsoever into Gibraltar or the person to whom such goods are consigned to open every receptacle containing such goods in order that they may be examined.

(2) Every receptacle opened in compliance with the provisions of this section shall be opened and closed by and at the expense of the owner.

(3) A person who neglects or refuses to comply with a request of a customs officer made under this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

25A.(1) The Government may direct the Collector of Customs in circumstances described in such direction to desist from carrying out any controls searches or other functions or powers required or permitted under this Act on any persons or category of persons who enter or leave Gibraltar and who are in transit by land or air through the airport to any country specified in such direction.

(2) Any duty requirement or obligation imposed by this Act on any person entering or leaving Gibraltar shall not apply to a person to which any

direction under sub-section (1) relates to the extent described in such direction.

(3) No direction under sub-section (1) shall authorize or allow any person to import into Gibraltar a prohibited import.

(4) The Collector of Customs and all customs officers shall be bound by and shall implement any direction under sub-section (1).

(5) The Government may by regulations make such further or different provisions as it may think necessary or desirable to give effect to the arrangements set out in the Ministerial Statement on Gibraltar Airport made at Cordoba on the 18<sup>th</sup> September 2006, inter alia by the Chief Minister and any such regulations may have retrospective effect to the date on which this section comes into operation.

*Goods Imported by Post.*

**Goods imported by post other than in the course of trade.**

26. (1) Notwithstanding any other provision of this Act, when goods are imported into Gibraltar through the post, other than in the course of trade, and a declaration form or label is affixed to the package in accordance with the postal regulations, such goods may, on payment to a customs officer of any duty thereon, be delivered to the consignee.

(2) The particulars of contents and value entered on such declaration form or label and signed by the sender may, subject to verification by a customs officer, be accepted for the purpose of assessing any duty payable.

*Places for Storage.*

**Customs warehouse.**

27. The Collector may, from time to time, designate any building to be a Customs warehouse for the reception and securing of any dutiable goods.

**Approval of transit sheds.**

(1952 c.44, s.17). 28. (1) The Collector may, approve, for such periods and subject to such conditions and restrictions as he may see fit, transit sheds at the port, at the airport and at Four Corners or such other place as he may determine, for the deposit of goods not yet cleared from customs control, including goods not yet reported and entered under this Act.

(2) The Collector may at any time for reasonable cause revoke or vary the terms of his approval of any transit shed.

(3) A person who contravenes any condition or restriction imposed by the Collector under this section is guilty of an offence.

## **Licence fees.**

29. (1) The Collector may, from time to time, prescribe licence fees for the receipt and storage of dutiable goods in Customs warehouses and transit sheds and for the delivery of the goods therefrom.

(2) The owner of any goods in a Customs warehouse or transit shed shall not be entitled to remove any of those goods until licence fees in respect of them have been paid.

## **Approval of private bonded stores.**

30. (1) The Collector may approve, for such periods and subject to such conditions as he may think fit, places of security for the deposit, keeping and securing, subject to such conditions and restrictions as he may see fit to impose, of any goods chargeable with duty without payment of that duty, and any place of security so approved is referred to in this Act as a private bonded store. *(1952 c.44, s.80).*

(2) The Collector may from time to time give directions—

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

(3) The Collector may at any time for reasonable cause revoke or vary the terms of his approval of any private bonded store.

(4) A person who contravenes any condition imposed or direction given by the Collector under this section is guilty of an offence and is liable, on summary conviction, to a fine at level 3 on the standard scale.

(5) The occupier of any private bonded store who, without the approval of the Collector, makes any alternation therein or addition thereto is guilty of an offence.

## **Restriction on storage in ships, etc., or at airport.**

31. (1) Save to such extent and for such time as may be authorized in writing by the Collector, no dutiable goods shall be stored in any ship, lighter or hulk or at the airport.

(2) A person who contravenes the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of three times the value of the goods or at level 4 on the standard scale, whichever is the greater.

*Deposit of Goods in Stores.*

**Removal of dutiable goods in stores.**

32. (1) Dutiable goods imported into Gibraltar, whether unloaded at the public quay at Waterport or the North Mole or at the airport or brought to Four Corners, whether entered for storage or in transit, shall be removed under the direction of the Collector to an approved place and shall be deposited and kept in such place until removed thence either for consumption in Gibraltar or for exportation.

(2) Nothing in subsection (1) shall preclude goods entered for storage or in transit from being deposited in an approved transit shed pending removal to an approved place.

**Goods entered for storage.**

33. (1) Dutiable goods entered for storage shall, save as may be permitted by this or any other Act, be stored in the receptacles or lots in which they were first entered for storage.

(2) The owner of stored goods shall mark the receptacles or lots in such manner as a customs officer may direct and keep them so marked while they are in storage.

(3) The goods shall be deemed to be duly stored as from the time when a customs officer certifies that the entry and storing are complete.

(4) A person who fails to comply with the provisions of subsection (2) is guilty of an offence and is liable, on summary conviction, to a fine at level 3 on the standard scale.

**Receptacles found on wharf during closed hours.**

34. (1) All receptacles, of whatever size or description and whatever may be the contents thereof, found by night or during closed hours upon the quay at Waterport or at the North Mole or at the airport or adjacent to British Lines

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Road or at such other place as the Collector may, by notice in the Gazette, determine from time to time may be removed to and deposited in an approved place.

(2) The provisions of sections 39, 40 and 78 shall apply to all receptacles and their contents removed into any approved place under subsection (1).

(3) Any sums recoverable in respect of the removal or storage of any receptacle may be recovered from the person responsible for the receptacle being left on the quay or at the airport or adjacent to British Lines Road or at any other place designated in accordance with subsection (1) or from the owner of the receptacle or its contents.

35. *Revoked*

## **Dangerous goods.**

36. (1) The customs officer in charge of any Customs Warehouse may refuse to admit goods for storage therein if he considers that they would be likely to cause damage to the store or shed, or to any of the goods therein or likely to be placed therein.

(2) Where a customs officer refuses to admit any goods into a Customs Warehouse, any duty payable upon such goods shall become due and payable and shall be paid and the goods shall be removed from Waterport, the North Mole, the airport or Four Corners within such time as the customs officer may require.

(3) If such duty is not paid and the goods are not removed within such time, the Collector may cause the goods to be sold.

## *Operations in Stores.*

## **Sorting, repacking, etc. of goods in stores.**

37. A customs officer may allow the owner or other person having control of stored goods to sort, separate, pack and repack 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 preparation for the sale, shipment or legal disposal of the same and also to permit any part of such goods so separated and not worth the duty thereon to be destroyed, without payment of duty on the portion so destroyed.

## **Taking samples.**

38. A customs officer may permit the importer of any stored goods to take moderate sample of those goods, without requiring payment of the duty due thereon.

**Time limit for storage.**

39. (1) All goods which have been deposited in a an approved transit shed shall, subject to section 40, be removed from the store for consumption in Gibraltar or for exportation within one month from the date of deposit.

(2) If such goods are not removed within that time, the Collector may cause the goods to be sold.

**Conditions in relation to storage.**

40. Where goods have been stored in an approved place. a Customs warehouse or an approved processing zone, the Collector may impose such conditions on the storage of those goods as he shall think fit for the purpose of ensuring compliance with this Act and where such conditions are not met, the Collector may cause goods stored contrary to such conditions, to be sold.

**Duty to produce goods in private bonded stores.**

41. (1) The occupier of a private bonded store shall produce to any customs officer on request any goods deposited therein which have not been lawfully authorized to be removed.

(2) Where any goods are not produced in accordance with the provisions of subsection (1), they shall be deemed to have been removed on the day on which the request for their production has been made.

(3) A person who, on being requested to produce any goods under subsection (1), fails to do so is liable to pay forthwith any duty payable in respect of the goods and in addition a penalty an amount equivalent to level 3 on the standard scale for each receptacle or lot not produced.

*Sales and Disposals of Goods by the Collector.*

**Conduct of sales.**

42. (1) Where, under the provisions of sections 36, 39 and 40, the Collector has power to sell any goods, the following provisions shall apply.

(2) The Collector may sell the goods by public auction or by public tender after advertisement in the public press.

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(3) The Collector may refuse to accept any offer for the goods, whether offered for sale by public auction or by public tender.

(4) Goods which are offered for sale by public auction or by public tender and which are not sold shall be deemed to be abandoned by the owner and may be destroyed or otherwise disposed of by the Collector.

## **Proceeds of sale and recovery of shortfall.**

43. (1) Out of the proceeds of any sale made in accordance with section 42, the Collector shall pay—

- (a) the expenses of the sale and of any previous attempted sale of the goods;
- (b) all licence fees owing in respect of the storage of the goods and the cost of their removal to and from the store; and
- (c) the duty, if any, payable on the goods,

and shall pay the sum remaining, if any, to the importer, if he submits a claim within three months of the sale.

(2) If, after the goods have been sold or otherwise disposed of, the proceeds are insufficient to discharge the amount due under paragraphs (a), (b) and (c) of subsection (1), the Collector may recover the balance from the owner or from the person who deposited the goods in the store, summarily, as a civil debt.

44. *Repealed*

## **PART V. IMPORT DUTY.**

### *Imposition of Duty.*

#### **Import duty.**

45. (1) Subject to the provisions of this Act, import duty, at the rates prescribed by regulation, shall be charged, levied and collected upon and in respect of the several goods specified in those regulations and shall be paid into the Consolidated Fund.

- (2) Import duty shall be payable on the quantity of the goods—
  - (a) as shown in the relevant entry; or

(b) as discovered at the time of removal, whichever is the greater.

(3) Any regulations of the kind referred to in subsection (1) shall be laid before the Parliament at the meeting thereof commencing next after such regulations have been published in the Gazette.

*Variation of Rates of Duty.*

46 to 49. *Revoked*

**Regulations for lower rate of duty on goods for export.**

50. It shall be lawful for the Government from time to time by regulations to provide that a rate of duty lower than that imposed by section 45 shall be payable on any goods deposited in an approved place before payment of duty and which on removal from the store are to be exported.

**Date for ascertainment of rate and adjustment of advance payments.**

51. (1) Import duty shall be paid at the rate in force at the time when the duty becomes payable in accordance with the provisions of this Act.

(2) Where duty has been paid on any goods at any time before it becomes payable and the rate of duty on such goods is altered between the time of payment and the time when the duty becomes payable, then, if the rate of duty has been increased, the difference between the amount of duty paid and the amount of duty payable shall be paid at the time of removal of the goods and, if the rate of duty has been decreased, the difference between the amount of duty paid and the amount of duty payable shall be repaid at such time.

*Time for Payment and Delivery on Security.*

**When duty becomes due.**

52. (1) Import duty shall become due in respect of goods specified by regulation at the time of importation.

- (2) The time of importation of any goods shall be deemed to be—
- (a) where the goods are brought by sea, the time when the ship carrying them comes within the territorial limits of Gibraltar;
  - (b) where the goods are brought by air, the time when the aircraft carrying them lands in Gibraltar;



- (c) where the goods are brought by land, the time when the vehicle carrying them enters Gibraltar.

### **When duty becomes payable on goods entered for storage.**

53. (1) Subject to the provisions of sections 62 to 66, import duty shall be payable upon all dutiable goods not entered for storage before a customs officer may permit their removal from the place where they were unloaded or from Four Corners, as the case may be.

(2) If entry is made of such goods, the duty shall be paid at the time when the entry is made.

(3) If goods have not been entered within the relevant period as required by section 21 and have not been placed in an approved transit shed in accordance with section 23, they shall be deemed to have been entered on the last day of that period and duty thereon shall be payable on that day, notwithstanding that the goods have not been removed.

### **When duty becomes payable on goods imported through the post.**

54. Subject to the provisions of sections 62, 63, 65 and 66, import duty shall be payable upon all dutiable goods imported through the post, whether or not in the course of trade, before the may be trade, goods may be removed from the Post Office.

### **When duty becomes payable on goods in Government and private bonded stores.**

55. Subject to the provisions of sections 56, 57, 62, 63, 65 and 66, import duty shall be payable upon all dutiable goods which were entered for storage in an approved place, immediately before the goods are removed therefrom.

### **When duty becomes payable on motor vehicles, etc.**

56. Subject to the provisions of sections 62, 63, 65 and 66, import duty shall be payable upon motor vehicles that are registrable under the Traffic Act—

- (a) immediately prior to registration; or
- (b) where they have been stored in an approved place, immediately before removal therefrom,

whichever is the earlier.

**Release of goods on giving of security.**

57. (1) Where it is impracticable immediately to ascertain whether any or what import duty is payable in respect of any imported goods, the Collector may, if he thinks fit, and notwithstanding any other provisions of this Act, allow those goods to be removed upon the importer giving security by deposit of money or otherwise to his satisfaction for the payment of any amount unpaid which may be payable by way of duty.

(2) Where goods are allowed to be removed under subsection (1), the Collector shall, when he has determined the amount of duty which in his opinion is payable, give to the importer a notice specifying the amount; and the amount so specified or, where any amount has been deposited under subsection (1), any difference between those amounts shall forthwith be paid or repaid, as the case may require:

Provided that if the importer disputes the correctness of the amount so specified, he may appeal therefrom in accordance with section 96.

**Liability arising on sale of goods imported free of duty.**

58. (1) If goods which were imported free of duty, on the ground that they were the property of the Crown or of any person permitted under the provisions of this Act or otherwise to import such goods free of duty, are sold, they shall become liable to and be charged with duty at the rate payable on the importation of similar goods not the property of the Crown or of such person:

Provided that the Collector may direct that the provisions of this subsection shall not apply in respect of the sale of any particular goods.

(2) A person who causes such goods to be sold shall furnish the Collector with particulars of the sale thereof and out of the proceeds of the sale shall pay to him the duty due thereon.

*Valuation for Duty.***Valuation of goods.**

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

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

- (a) that the goods are delivered to the buyer at the place of importation;
- (b) that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at that place; and
- (c) that the buyer bears any duties or taxes applicable in Gibraltar.

(3) A sale in the open market between a buyer and a seller independent of each other presupposes—

- (a) that the price is the sole consideration (by consideration is meant not only the fulfillment of a legal or contractual obligation but also any other form of consideration);
- (b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him, other than the relationship created by the sale itself; and
- (c) that no part of the proceeds of any subsequent re-sale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.

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

(5) When the goods to be valued—

- (a) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied;
- (b) are imported under a trade mark; or
- (c) are imported for sale, other disposal or use under a foreign trade mark;

the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods. The normal price shall be determined on the assumption that the sale is a sale of the quantity to be valued.

**Unassembled articles.**

60. When the component parts of an article are imported together in an unassembled condition, the rate of duty payable shall be the rate of duty payable in respect of the article when imported in an assembled condition, notwithstanding that the constituent parts are packed separately.

**Goods exported for repair, etc.**

61. Any article which has been registered with a customs officer at the time of exportation as being exported for alteration, repair or renovation shall, on being re-imported and identified to the satisfaction of a customs officer, be liable only to the rate of duty applicable to the article computed on the cost of alteration, repair or renovation, as the case may be.

*Exemptions.*

**Goods about to be exported.**

62. Where the Collector so directs, no duty shall be payable upon goods stored in an approved place or a private bonded store which—

- (a) are removed for exportation and immediately upon removal are loaded upon a ship, aircraft or vehicle leaving Gibraltar, in such manner as to satisfy a customs officer that such goods will not be interfered with before the ship, aircraft or vehicle leaves Gibraltar; or
- (b) being duty-free goods within the meaning of regulations made by the Government under section 74, are, in such manner as to satisfy a customs officer, removed and immediately on removal, taken to and received in premises designated by the Collector under the provisions of section 73; or
- (c) being spirituous liquors, wines, tobacco, cigarettes or cigars, are, in such manner as to satisfy a customs officer, removed and, immediately upon removal, taken and delivered to a person who is about to leave Gibraltar by ship, at the time the person is about to board the ship.

**Exemption from duty of goods on transit, etc.**

63. Where any goods are entered for transit or transshipment, the Collector may allow the goods to be removed for that purpose, subject to such conditions and restrictions as he may see fit, without payment of duty.

**Exemption from duty of aircraft and their parts and certain fuel oil.**

64. No import duty shall be payable in respect of—

- (a) aircraft;
- (b) engines, spare parts and equipment carried and exclusively used on aircraft;
- (c) fuel and oil carried and used on aircraft;
- (d) fuel and oil taken on board in Gibraltar by aircraft or ships.

**Exemption from duty of goods imported for Crown contracts.**

65. (1) Where—

- (a) any dutiable goods, other than plant or a vehicle, are or are to be imported into Gibraltar by a contractor or sub-contractor for the purposes of a contract awarded by the Crown; and
- (b) the Collector is satisfied that the goods will become the property of the Crown by incorporation into any work to be carried out under the contract,

the Collector may, in writing and on such conditions, if any, as he may impose, exempt those goods from the payment of any import duty.

(2) Where

- (a) any plant or vehicle is or is to be imported into Gibraltar by a contractor or sub-contractor solely for use on a contract awarded by the Crown; and
- (b) the Collector is satisfied that the plant or vehicle will be exported from Gibraltar when it ceases to be required for use on the contract,

the Collector may, in writing and on such conditions, if any, as he may impose, exempt that plant or vehicle from the payment of any import duty.

(3) Where the Collector grants any exemption under subsection (2), he may vary the terms of the exemption by subsequently allowing the plant or vehicle to be used on any other contract awarded by the Crown, on such conditions, if any, as he may think fit to impose.

(4) Any condition imposed by the Collector under this section may include the requirement of a deposit of money or other security until, and to ensure that, the goods to which it relates are used for the purposes and in accordance with other conditions on which the exemption is granted.

**Regulations for the granting of other exemptions.**

66. The Government may by regulations grant exemption from the payment of import duty on other goods, subject to such conditions as he may prescribe—

- (a) to persons entering Gibraltar, in respect of such goods, in such quantities and to such value as he may determine;
- (b) on motor vehicles, to persons making only a temporary stay in Gibraltar, including members of Her Majesty's forces and persons serving under technical co-operation agreements;
- (c) on ships of small tonnage brought into Gibraltar by persons not normally resident in Gibraltar;
- (d) in respect of such other items as he may determine from time to time shall be so exempt in the economic or social interests of Gibraltar.

*Remission and Refund.*

**Remission or refund of duty on goods lost or destroyed, etc.**

67. (1) Where it is shown to the satisfaction of the Collector that—

- (a) any goods on which duty has been paid has been destroyed or lost before clearance has been granted and before they were removed from an approved transit shed; or
- (b) any goods in respect of which an entry has been made and duty paid before importation have been so destroyed or lost—
  - (i) after importation but before clearance for any purpose for which they were entered on importation;

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- (ii) while in an approved transit shed,

the Collector shall remit or refund any duty chargeable or paid thereon.

(2) Where it is shown to the satisfaction of the Collector that any goods on which duty has been paid before duty has become due thereon have not been imported into Gibraltar and no duty has become due in respect thereof, the Collector shall refund any duty so paid.

(3) The Collector may, at the request of the owner of the goods in question and subject to compliance with such conditions as the Collector may see fit to impose, permit the destruction of and waive payment of duty on any imported goods not yet cleared for any purpose for which they were entered on importation or any goods in storage, being in either case goods which have by reason of their state or condition ceased to be worth the full duty chargeable thereon.

(4) No remission or refund shall be made under subsection (1) unless it is claimed within 12 months following the date of the destruction or loss of the goods to which it relates.

## **Refund of goods not conforming to contract.**

68. (1) Subject to subsection (3) and such other conditions as the Collector may see fit to impose, where it is shown to the satisfaction of the Collector—

- (a) that goods on which duty has been paid were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged in transit; and
- (b) that the importer, with the consent of the seller, either—
  - (i) returned the goods unused to the seller under customs supervision in compliance with any directions given by the Collector; or
  - (ii) destroyed the goods unused under customs supervision,

the Collector shall refund the duty paid on the importation of the goods.

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

(3) No refund shall be made under subsection (1) unless the goods are returned or destroyed within 12 months from the date of the payment of the duty and a claim for refund is made within that time.

**Refund in respect of supplies to aircraft.**

69. Where duty has been paid on any goods of a kind to which section 64 relates, which are to be used as and for the purposes mentioned in that section, and which are goods otherwise subject to duty, a refund of the amount of the duty shall be allowed to the person supplying the same:

Provided that—

- (a) sufficient information both of the intention to supply any such article or thing and proof of the delivery of such article or thing is given to the Collector at such time and in such form as he may require;
- (b) such further information in connection with the supply of such article or thing is given to the Collector as to enable him to satisfy himself as to the particulars of the article or thing supplied;
- (c) the refund is claimed within three months of the date of the delivery of the article or thing in respect of which the refund is claimed; and
- (d) all expenses incurred and charges made by the Government in connection with obtaining the necessary proof for the refund are paid by the person claiming the refund at the time when the expenses are incurred and the charges made.

**Refund of duty on motor spirit re-exported.**

70. (1) When motor spirit imported into Gibraltar is subsequently exported otherwise than by land, and in circumstances other than those provided for in section 69, the Collector may refund to the importer a sum equal to 75 per cent of the amount of duty which would be payable at the date of exportation upon the importation of an equivalent quantity of motor spirit to that being exported.

(2) Where the duty on motor spirit has been varied within a year prior to the exportation of the motor spirit in respect of which the refund is to be made, the amount of duty to be refunded shall be based upon the lowest amount of duty charged within such period, unless the exporter can satisfy



the Collector as to the rate of duty actually paid in respect of the motor spirit then being exported.

(3) Every person selling motor spirit in Gibraltar shall be deemed to be the importer thereof until the contrary is proved.

## **Refund of duty on motor spirit for use of the Crown.**

71. (1) When motor spirit imported into Gibraltar is purchased by the proper authority for use solely in or upon motor vehicles the property of and engaged exclusively in the service of the Crown, it shall be lawful for the Collector, subject to such conditions as may be approved by the Government, to refund to the purchaser the amount of the duty paid on such purchase.

(2) For the purposes of this section, the expression “proper authority” means the duly authorized purchaser on behalf of the Government or of the Government of the United Kingdom or of Her Majesty’s naval, military and air forces in Gibraltar.

## **Power for Government to allow other refunds and drawback.**

72.(1) The Government may from time to time by regulations direct the refund of the duty, or any part thereof paid on the importation of any goods of such kinds as may be specified in the regulations.

(2) Any such regulations may prescribe conditions to be satisfied before any such refund may be allowed.

### *Duty Free Premises.*

## **Power to declare premises duty free.**

73. (1) The Collector may designate any premises from which articles of any description specified in the order (hereinafter called “duty free goods”) on which duty has not been paid may be sold to any person who is about to leave Gibraltar.

(2) Where the Collector has designated premises in accordance with subsection (1), he may grant a licence to any person to sell duty-free goods from such premises.

(3) Every licence granted under the provisions of subsection (2) shall be subject to such conditions as the Collector may, in his discretion, impose.

(4) The Collector shall charge a licence fee for the use of the premises, which may, in his discretion, be either a fixed sum or be assessed on the amount of duty free goods received in the premises, and shall be paid at such times as may be stated in the licence.

**Regulations relating to duty free goods.**

74. The Government may make regulations for the purpose of providing for the payment of fees to the Collector in respect of all duty free goods specified from time to time in such regulations which—

- (a) have been received in premises in respect of which a licence has been granted under section 73; or
- (b) have been delivered to a person who is about to leave Gibraltar by ship; or
- (c) have been supplied to a ship which is about to leave Gibraltar.

**PART VI.**

RELEASE FROM CUSTOMS CONTROL.

**Goods imported by ships, aircraft and vehicles.\***

75. Save in such cases as may be prescribed, no person shall deliver or remove any goods from Waterport, the North Mole, the airport or Four Corners—

- (a) unless an entry thereof, in such form and containing such particulars as may be prescribed, has been delivered to a customs officer in accordance with section 21; and
- (b) the duty on those goods, if any, has been paid; and
- (c) except with the authority of a customs officer and in accordance with any directions he may give:

Provided that any goods which a customs officer is satisfied are the personal baggage of a passenger in a ship, aircraft or vehicle arriving in Gibraltar may, with the permission of the customs officer, be removed without any entry first being made.

**Goods imported by post in the course of trade.**

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\* See waiver LN. 2007/048

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76. Save in such cases as may be prescribed, no person shall remove from the Post Office any goods imported by post in the course of trade—

- (a) unless an entry thereof, in such form and containing such particulars as may be prescribed, has been delivered to a customs officer in accordance with section 21; and
- (b) the duty on those goods, if any, has been paid; and
- (c) except with the authority of a customs officer and in accordance with any directions he may give.

### **Goods in approved places and transit sheds.**

77. Save in such cases as may be prescribed, no person shall deliver or remove any goods from an approved place or from a transit shed unless,—

- (a) an entry thereof in such form and containing such particulars as may be prescribed has been delivered to a Customs Officer in accordance with section 21; and
- (b) the duty on those goods, if any, has been paid; and
- (c) all charges and fees payable in respect of the storage of the goods and any wharfage and other charges in respect thereof, have been paid; and
- (d) the authority of a Customs Officer has been obtained and the removal is in accordance with any directions he may have given.

### **Goods in private bonded stores.**

78. Save in such cases as may be prescribed, no person shall deliver or remove any goods from a private bonded store, unless—

- (a) an entry thereof, in such form and manner and containing such particulars as the Collector may require has been delivered; and
- (b) the duty on those goods, if any, has been paid.

## **PART VII. CONTROL OF EXPORTS.**

### *Prohibited Exports.*

**Power to prohibit or restrict exports.**

79. (1) The Government may, if he thinks fit, from time to time, by regulations prohibit, restrict or regulate the exportation from Gibraltar of any goods or class of goods.

- (2) Regulations made under this section may—
- (a) specify any goods or class of goods, either generally or in any particular manner;
  - (b) prohibit, restrict or regulate the exportation either to all places or to any particular country or place;
  - (c) require the goods to be consigned to a person authorized by the regulations to receive the goods; and
  - (d) require the production, within a specified time, of evidence to the satisfaction of the Collector of the due delivery of the goods to the consignee.
- (3) A person who—
- (a) exports any goods the exportation of which is prohibited; or
  - (b) exports any goods the exportation of which is restricted or regulated, except in accordance with the restriction or regulation applicable,

whether such exportation is prohibited, restricted or regulated under this Act or under any other law, is guilty of an offence and is liable on summary conviction to a fine of three times the value of the goods or at level 4 on the standard scale whichever is the greater.

**Controlled drugs.**

80. A person who exports goods comprising or including a controlled drug or Scheduled Substance contrary to the provisions of the Drugs (Misuse) Act, is guilty of an offence and is liable—

- (a) where the drug is a Class A or Class B drug—
  - (i) on summary conviction to a fine at level 5 on the standard scale and to imprisonment for 12 months;

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- (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment, in the case where the goods were a Class A drug, for life, or where the goods were a Class B drug, for 14 years;
- (b) where the drug is a Class C drug—
  - (i) on summary conviction to a fine at level 4 on the standard scale and to imprisonment for 6 months;
  - (ii) on conviction on indictment, to a fine of such amount as the court may determine and to imprisonment for 5 years;
- (c) where it is a Scheduled Substance—
  - (i) on summary conviction to a fine at level 4 on the standard scale and to imprisonment for six months;
  - (ii) on conviction on indictment to a fine of such amount as the Court may determine and to imprisonment for five years.

### *Report of Cargo.*

#### **Outward manifests.**

81. (1) The master or agent of every ship, the commander or agent of every aircraft and the person in charge or control of every vehicle departing from Gibraltar shall, if such ship, aircraft or vehicle is carrying cargo—

- (a) before departure, make report of the ship, aircraft or vehicle and her cargo by delivering to a customs officer an outward manifest of goods on board signed by the master, commander, agent or other person, as the case may be;
- (b) answer all questions which may be put by the customs officer relating to the ship, aircraft or vehicle and her cargo, crew, passengers, stores and voyage; and
- (c) produce and deliver any document that may be required by a customs officer relating to the ship aircraft or vehicle and her cargo, stores, crew or passengers, whether or not in transit and irrespective of the tonnage of the ship.

(2) The manifest required under the provisions of subsection (1) shall, in respect of a ship of over 1,000 net tons, relate only to cargo that has been loaded in Gibraltar.

(3) The manifest shall contain the following particulars—

- (a) the name of the consignor;
- (b) the name of the consignee;
- (c) the marks and numbers of the packages;
- (d) the number and kind of packages;
- (e) the description of the goods; and
- (f) such other particulars as may be prescribed by regulations.

(4) For the purposes of this section, “cargo” does not include goods shipped as stores for consumption on board.

(5) A master, commander, person in charge or control of a vehicle or agent who fails to comply with the provisions of subsection (1) is guilty of an offence.

*Other Provisions.*

**Return of oils exported.**

82. A person who exports any fuel, diesel or gas oils from Gibraltar shall furnish to the Collector on the first day of every month a return, in such form as the Collector may require, showing the quantity of such oils exported by such person during the preceding month.

**Unloading of goods loaded for export.**

83. (1) Where goods have been loaded or retained on board a ship, aircraft or vehicle for exportation to and discharge at a place outside Gibraltar, they shall not be unloaded in Gibraltar, unless—

- (a) the unloading is authorized by a customs officer; and
- (b) any duty chargeable and unpaid on the goods is paid, unless the customs officer otherwise permits.

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(2) The Collector may impose such conditions as he may think fit with respect to any goods permitted to be unloaded in Gibraltar under subsection (1).

(3) The master of the ship, the commander of the aircraft or the person in charge of the vehicle, as the case may be, and any person concerned in the unloading are each guilty of an offence if goods are unloaded in contravention of subsection (1) or of any conditions imposed under subsection (2).

(4) Where any goods loaded or retained as aforesaid are goods from storage, transit goods or other goods chargeable with duty which has not been paid, and, without the authority of a customs officer, any receptacle in which the goods are held is opened or any mark, letter or device on any such receptacle or on any lot of the goods is cancelled, obliterated or altered, every person concerned in the opening, cancellation, obliteration or alteration is guilty of an offence against this section.

(5) A person guilty of an offence against this section is liable on summary conviction to a fine of three times the value of the goods at level 5 on the standard scale, whichever is the greater.

## **Opening of receptacles for examination.**

84. (1) A customs officer may require any person taking or sending any goods whatsoever out of Gibraltar to open every receptacle containing such goods in order that they may be examined.

(2) Any receptacle opened in compliance with the provisions of subsection (1) shall be opened and closed by and at the expense of the person taking or sending the goods out of Gibraltar.

(3) A person who neglects or refuses to comply with a requirement of a customs officer made under subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine at level 3 on the standard scale.

## **Time of exportation.**

85. The time of exportation of any goods from Gibraltar shall be deemed to be the time when the goods are loaded for exportation:

Provided that, in the case of goods of a class or description with respect to which any prohibition or restriction is for the time being in force under or by virtue of any Act, the time of exportation shall be deemed to be the time when the goods intended to be exported are loaded onto the ship, aircraft or

vehicle which is to be used for the transportation of such goods to a destination outside Gibraltar.

**PART VIII.**  
SPECIAL PROVISIONS RELATING TO  
WINES, SPIRITS AND TOBACCO.

**Description and designation of casks.**

86. The description and designation of casks containing wines and spirits for the purposes of customs and the payment of import duty shall be as follows, in each case the full contents of the cask when gauged being taken—

less than 80 litres		half-quarter cask
80 litres and over,	but less than 135 litres	quarter cask
135 “ “	189 “	tierce
189 “ “	292.5 “	hogshead
292.5 “ “	540 “	pipe or but
540 litres and over		botasso.

**Estimated contents of casks.**

87. For the purpose of assessing duty upon the contents of certain casks containing malt liquors—

hogsheads shall be assumed to contain		
tierces “ “ “ “		238.5 litres
kilderkins (quarter-cask) “ “		157.5
firkins (octave) “ “		78.75

subject always to inspection and measurement when deemed advisable.

**Spirits for infusion.**

88. (1) No spirits of a specific gravity in excess of 100 per cent proof shall be imported into Gibraltar for retail sale and no such spirits shall be sold retail in Gibraltar.

(2) Spirits of a specific gravity in excess of 100 per cent proof for infusion into liqueurs may be imported into Gibraltar, subject to payment of import duty, provided that at the time of importation they are reduced by the addition of water to a specific gravity of or below 100 per cent proof.

(3) A person who contravenes the provisions of this section is guilty of an offence.



## Owner may take samples.

89. Upon the landing at the public quay at Waterport or upon the conveying to Waterport from Four Corners or from the airport of any wines, spirits, malt liquors or tobacco, the owner thereof may, at Waterport, with the approval of the Collector and under the superintendence of a customs officer, take by way of sample and without paying the duty due thereon, a quantity not exceeding—

- (a) in the case of wines or spirits—
  - (i) from all pipes or other larger casks, one litre; and
  - (ii) from all smaller casks, one half of a litre;
- (b) in the case of malt liquors—
  - (i) from all hogsheads or other larger casks, one litre; and
  - (ii) from all smaller casks, one half of a litre;
- (c) in the case of tobacco, such quantity not exceeding one half of a kilogram in weight as the Collector may approve.

90. *Repealed.*

91. *Repealed.*

## Export of tobacco by air and sea.

91A.(1) No person shall, without approval of the Collector, export or attempt to export tobacco from any place in Gibraltar other than—

- (a) by sea from a place where the vessel is berthed or anchored with the authority of the Captain of the Port or, as the case may be, the Queen's Harbour Master;
- (b) by air, from Gibraltar Airport.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 on the standard scale or to 3 months imprisonment or to both.

## Exports by land.

91B.(1) No person shall, without the written approval of the Collector, export or attempt to export tobacco or any other article or goods by land other than through the pedestrian or vehicular gates at the frontier or through the commercial gate at the frontier when it is open for authorized commercial traffic under the supervision and control of a customs officer.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale or in default to imprisonment for a period not less than one month but not exceeding 3 months.

(3) A person who is convicted of an offence under this section, having been previously convicted of an offence under this section shall be sentenced on summary conviction to 3 months imprisonment.

(4) No prosecution for an offence under this section shall be brought without the prior consent in writing of the Attorney General.

#### **PART VIII.**

#### **DECLARATION OF CASH AND CASH EQUIVALENTS.**

#### **Interpretation.**

91C.(1) In this Part-

“competent authority” means the person appointed under section 91D;

“GFIU” means the Gibraltar Financial and Intelligence Unit established under section 1B of the Proceeds of Crime Act 2015;

“European Regulation” means Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, as amended from time to time; and

“Member State” means a member state of the European Union.

(2) Any word or expression used but not defined in this Part has the meaning given in the European Regulation.

#### **Appointment of competent authority.**

91D.(1) Subject to a notice made under subsection (2), the Collector of Customs is designated as the competent authority for Gibraltar for the purposes of Article 2(1) of the European Regulation.

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(2) The Minister may, by notice in the Gazette, designate such other person as he considers fit to be the competent authority for Gibraltar for the purposes of Article 2(1) of the European Regulation.

## **Mode of declaration.**

91E.(1) A declaration under Article 3 of the European Regulation must be made in writing and in such form as has been approved by the competent authority.

(2) The competent authority must make any forms approved under subsection (1) available to the public, including persons entering Gibraltar.

## **Power to require information.**

91F.(1) For the purposes of ensuring compliance with the European Regulation, a customs officer may require information from a person to determine-

- (a) whether that person is concerned with the importation or exportation of cash for which a declaration is required; and
- (b) whether a declaration has been made.

(2) A person who dishonestly-

- (a) withholds substantive information; or
- (b) misleads a customs officer;

when providing information in accordance with subsection (1) commits an offence and is liable on summary conviction to imprisonment for a period not exceeding six months or a fine not exceeding level 4 on the standard scale.

## **Right of access.**

91G. For the purposes of ensuring compliance with the European Regulation, every customs officer shall have free access to every part of any ship, aircraft or vehicle and may-

- (a) lock up, seal, or otherwise secure any cash carried in the ship, aircraft or vehicle or any place or container in which they are so carried; or

- (b) break open any place or receptacle which is locked and of which the keys are withheld.

**Power to search ships, aircraft and vehicles.**

91H.(1) Where there are reasonable grounds to suspect that a ship, aircraft or vehicle is or may be carrying cash for which a declaration is required under Article 3 of the European Regulation, a customs officer may stop, where it is necessary and practicable, and may search that ship, aircraft or vehicle.

(2) A person in charge of a ship, aircraft or vehicle who refuses to stop or permit the ship, aircraft or vehicle to be searched when so required by a customs officer is guilty of an offence.

**Power to search individuals.**

91I. Where there are reasonable grounds to suspect that a person has failed to comply with the European Regulation, a customs officer may search him and any article he has with him:

Provided that no person shall be searched except by an officer of the same sex.

**Opening of receptacles.**

91J.(1) Where reasonably necessary to ensure compliance with the European Regulation, a customs officer may require a person to open a receptacle under that person's control.

(2) Every receptacle opened in compliance with this section must be opened and closed by and at the expense of the owner.

(3) A person who neglects or refuses to comply with a request of a customs officer made under this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

**Seizure.**

91K.(1) A customs officer may seize and, in accordance with this section, detain cash being imported into or exported from Gibraltar if the person importing or exporting that cash has not complied with his obligations under Article 3 of the European Regulation.

(2) Subject to subsections (4) and (5), cash seized by virtue of this section shall not be detained for more than 48 hours under this section.

(3) In calculating the period of 48 hours prescribed under subsection (2), no account shall be taken of-

- (a) any Saturday or Sunday
- (b) Christmas Day,
- (c) Good Friday,
- (d) any day that is a bank holiday under the Banking and Financial Dealings Act;

within which the cash is detained.

(4) An application for an order under section 120(4) of the Proceeds of Crime Act 2015 may be made in respect of cash seized under this section, and the judge, magistrates' court or the Supreme Court may make the order if satisfied that-

- (a) the cash could have been seized under section 119 of that Act; and
- (b) the conditions set out in section 120 of that Act have been met.

(5) Where cash seized under this section is subject to an order under section 120(4) of the Proceeds of Crime Act 2015, the provisions of that Act shall have effect and apply accordingly to that cash.

## **Penalty.**

91L.(1) The competent authority may impose a penalty of such amount as it considers appropriate, not exceeding 10% of the undeclared amount, on a person failing to comply with Article 3 of the European Regulation.

(2) Where the competent authority decides to impose a penalty under this section, it must inform the person in writing of-

- (a) the decision to impose the penalty and its amount;
- (b) the reasons for imposing the penalty;
- (c) the review procedure; and
- (d) the right to appeal.

(3) Where a person is liable to a penalty under this section, the competent authority may reduce the penalty to such amount (including nil) as they think proper.

#### **Review Procedure.**

91M.(1) A person who is the subject of a decision to impose a penalty under section 91L may by notice in writing to the competent authority require it to review that decision.

(2) The competent authority need not review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the date on which written notification of the decision was first given to the person requiring the review.

(3) Where the competent authority is required under this section to review a decision, it must 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 they consider appropriate.

(4) Where the competent authority does not, within 45 days beginning with the date on which the review was required by a person, give notice to that person of its determination of the review, they are deemed for the purposes of this Part to have confirmed the decision.

#### **Appeals.**

91N.(1) An appeal may be made to the magistrates' court against-

- (a) the confirmation of a decision in a review conducted under section 91M(3)(a); or
- (b) the steps taken by the competent authority in consequence of a withdrawal or variation of the decision under section 91M(3)(b).

(2) An appeal under subsection (1) shall be brought within 21 days from-

- (a) the service on the person concerned of the notice of determination; or

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- (b) where a notice has not been served, the date on which a determination is deemed to have been made under section 91M(4).

(3) The court, in determining an appeal under this section must consider whether the decision confirmed or the steps taken under section 91M are appropriate having regard to all the circumstances of the case and in so doing may confirm, quash or substitute by order the decision made or steps taken.

## **Exchange of information.**

91O.(1) The competent authority shall collect and exchange information with-

- (a) the GFIU; and
- (b) the competent authorities appointed by Member States for the purposes of and to the extent required by Articles 5, 6 and 7 of the European Regulation.

(2) Any information collected or exchanged under this section shall comply with the provisions of the Data Protection Act 2004.

## **PART IX. MISCELLANEOUS.**

### **Drivers to stop vehicles for examination.**

92.(1) A person driving a vehicle shall, on entering or leaving Gibraltar by Four Corners, if requested to do so by a customs officer on duty, stop the vehicle for examination by the customs officer and shall not proceed until authorised to do so by the customs officer.

(2) A person driving a vehicle anywhere in Gibraltar shall stop the vehicle if signalled to do so by a customs officer and shall not proceed until authorized to do so after examination of the vehicle by the customs officer.

(3) A person who fails to comply with the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

### **Movement of dutiable goods, etc.**

93. (1) The Collector may from time to time give general or special directions in respect of goods to which this section applies, controlling or

restricting and imposing conditions on the movement of such goods within Gibraltar.

(2) In particular, but without limiting the generality of subsection (1), the Collector may give general or special directions—

- (a) requiring that any goods to which this section applies shall be moved only by specified means;
- (b) requiring that any goods to which this section applies shall be moved on specified routes;
- (c) specifying the places at which any goods to which this section applies shall be examined under this Act, and requiring any importer or exporter or other person owning or in physical possession of the goods to take them to any such place; and
- (d) specifying places from which goods may be exported from Gibraltar.

(3) A person who contravenes a direction given under this section is guilty of an offence and is liable, on summary conviction, to a fine at level 3 on the standard scale.

(4) This section applies to dutiable goods and to all other goods which have not been released from customs control under this Act, and also applies to any class or description of such goods.

**Dutiable goods not to be carried in small ships.**

94. (1) No dutiable goods upon which duty has not been paid shall be carried in any ship of less than 50 net tons, without the permission of the Collector:

Provided that this section shall not apply to any ship while engaged in the unloading or loading of cargo or the carrying of supplies from or to a ship in the Bay.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

**Sale of goods from ships in port.**

95. A person who sells, offers for sale, exposes for sale, barter or otherwise disposes of goods of any description from any ship in the port of Gibraltar,



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otherwise than from a ship licensed as a bum boat under the Port Act, is guilty of an offence:

Provided that this section shall not apply to a ship engaged only in carrying to other ships goods in respect of which an export licence has previously been obtained under this Act.

## **PART X.** **LEGAL PROCEEDINGS.**

### *Appeals.*

#### **Appeals.**

96. (1) Any person dissatisfied with a decision of the Collector—

- (a) as to whether or not any goods imported into Gibraltar are liable to duty; or
- (b) as to the proper rate or amount of duty payable in respect of any goods imported into Gibraltar.

may appeal to the Financial Secretary.

(2) Any person considering himself aggrieved by any decision of the Financial Secretary under this section may, within seven days of the decision being communicated to him and upon payment of the amount of duty required by the Financial Secretary, appeal to the magistrates' court, which shall upon the hearing of such appeal have power to make such order as it may think just, including the refund of any duty paid by the appellant in respect of the goods.

*Procedure in Respect of Offences, Recovery of Duties and Fees, etc.*

#### **Search warrants.**

97. (1) A justice of the peace, if satisfied by information upon oath that there is reasonable ground for believing that there is in any ship, aircraft, vehicle, building, receptacle or place—

- (a) anything upon or in respect of which an offence against the provisions of this Act or any regulations made thereunder has been or is suspected of having been committed; or
- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or

- (c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any such offence,

may at any time issue a warrant under his hand authorizing any customs officer named therein at any time or times within one month from the date thereof to enter, and if need be by force, the ship, aircraft, vehicle or building named in the warrant and every part thereof and to examine the same and search for any such thing and to seize and carry it, together with any receptacle containing the same, before the justice of the peace who issued the warrant or some other justice of the peace, to be by him dealt with according to law.

- (2) A person having a right of search under this section shall also have the right to seal any receptacle until it can be opened.

#### **Civil and criminal procedure.**

98. (1) Save as otherwise expressly provided in this Act, all offences against this Act or any regulations made thereunder, and all proceedings for the recovery of any duty, charge, fee, penalty or forfeiture imposed under this Act, or for the recovery of any overpayment of refund, shall be prosecuted or taken summarily.

- (2) When the person alleged to be liable to pay any duty, charge or fee, or the owner of anything sought to be condemned as forfeited, is absent from Gibraltar, it shall be deemed a sufficient compliance with the provisions of the law relating to the service of the summons, information or complaint or any other documents, if the same is left at his last known residence or place of business in Gibraltar or is affixed in any manner to the goods in connection with which the proceedings were taken.

- (3) Where a person liable to pay any duty, charge or fee or to repay any overpayment is absent from Gibraltar and the court has made an order for payment in the absence of such person, he shall not be liable to imprisonment under this Act for non-payment, unless the court making the order is satisfied that he was aware of the proceedings and had either refused or neglected to attend the court.

#### **Right of audience.**

99. (1) Where any proceedings are brought in a summary manner under this Act, any customs officer may appear to prosecute or conduct the case.

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(2) A statement by an individual that he is a customs officer and that he appears to prosecute or conduct any such case shall be prima facie evidence that the individual is a customs officer and that he is duly authorized to prosecute or conduct the case.

## **Evidence.**

100.(1) An averment in any process in proceedings under this Act—

- (a) that any person is a customs officer; or
- (b) that the approval, consent or permission of the Collector or any other customs officer has or has not been given as to any matter or that the Collector has or has not been satisfied as to any matter; or
- (c) that any goods thrown overboard, staved, broken or otherwise destroyed were so dealt with in order to prevent or avoid the seizure of those goods,

shall, until the contrary is proved, be sufficient evidence of the matter in question.

(2) Where in any proceedings relating to imports or exports, any question arises as to the place from which any goods have been brought or as to whether or not—

- (a) any duty has been paid or secured in respect of any goods; or
- (b) any goods or other things are of the description or nature alleged in the information, writ or other process; or
- (c) any goods have lawfully been imported, unloaded, sold or removed from any place; or
- (d) any goods have been lawfully loaded into any ship, aircraft or vehicle or lawfully exported; or
- (e) any goods were lawfully brought to any place for the purpose of being loaded into any ship, aircraft or vehicle or exported; or
- (f) any goods are or were subject to any prohibition on their importation or exportation,

and where those proceedings are brought by or against the Crown or the Attorney-General or the Collector or any other customs officer or against

any other person in respect of anything purporting to have been done in pursuance of any power or duty conferred or imposed on him by or under this Act, the burden of proof shall lie upon the other party to the proceedings.

**Limitation.**

101. All proceedings that are taken summarily or for the recovery of any penalty or forfeiture imposed by this Act may be commenced or prosecuted at any time within three years after the commission of the offence by reason whereof such penalty or forfeiture was incurred.

*Offences and Penalties.***Importing dutiable goods with intent.**

102. A person who imports, or is concerned in importing, any dutiable goods on which duty has not been paid, with intent to defraud Her Majesty's customs in Gibraltar of any duty is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine of three times the value of the goods or at level 4 on the standard scale whichever is the greater; or
- (b) on conviction on indictment, to imprisonment for two years and to a fine of three times the value of the goods or at level 5 on the standard scale, whichever is the greater.

**Importing concealed goods, etc.**

103. A person who—

- (a) imports or causes to be imported any goods concealed in a receptacle holding goods of a different description; or
- (b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with the entry made thereof,

is guilty of an offence and is liable—

- (i) on summary conviction, to imprisonment for six months and to a fine of three times the value of the goods or at level 4 on the standard scale, whichever is the greater; or

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- (ii) on conviction on indictment, to imprisonment for two years and to a fine of three times the value of the goods or at level 5 on the standard scale, whichever is the greater.

## **Unloading, etc., with intent.**

104. A person who unloads, tranships, delivers, removes or sells any dutiable goods on which duty has not been paid or any goods contrary to any prohibition or restriction for the time being in force, or assists or is otherwise concerned in such unloading, transshipping, delivery, removal or sale, whether or not the goods are unloaded, then, if he does so with intent to defraud Her Majesty's customs in Gibraltar of duty or to evade any such prohibition or restriction, is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine of three times the value of the goods or at level 4 on the standard scale, whichever is the greater, or
- (b) on conviction on indictment, to imprisonment for two years and to a fine of three times the value of the goods or at level 5 on the standard scale, whichever is the greater.

## **Fraudulent evasion of duty, etc.**

105. Without prejudice to any other provision of this Act, a person who—

- (a) knowingly and with intent to defraud Her Majesty's customs in Gibraltar of any duty payable thereon, or to evade any prohibition or restriction for the time being in force under or by virtue of any Act with respect thereto, acquires possession of, or is in any way concerned in carrying, delivering, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from an approved place, transit shed or private bonded store, or which are chargeable with a duty which has not been paid, or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force; or
- (b) is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods,

is guilty of an offence and is liable—

- (i) on summary conviction, to imprisonment for six months and to a fine of three times the value of the goods or at level 4 on the standard scale, whichever is the greater; or
- (ii) on conviction on indictment, to imprisonment for two years and to a fine of three times the value of the goods or at level 5 on the standard scale, whichever is the greater.
- (iii) if the offence concerns a Class A or Class B drug as defined in the Drugs (Misuse) Act:—
  - (a) on summary conviction to a fine at level 5 on the standard scale and to imprisonment for 12 months;
  - (b) on conviction on indictment to a fine of such amount as the court may determine and to imprisonment in the case where the goods were a Class A drug, for life or, where the goods were a Class B drug, for 14 years;
- (iv) if the offence concerns a Class C drug as defined in the Drugs (Misuse) Act:—
  - (a) on summary conviction to a fine at level 4 on the standard scale and to imprisonment for 6 months;
  - (b) on conviction on indictment to a fine of such amount as the court may determine and to imprisonment for 5 years.

#### **Unlawful possession of dutiable goods.**

106. A person who has in his custody or possession any dutiable goods on which duty has not been paid, or any goods which have been imported, unloaded, removed or sold contrary to the provisions of this Act, is guilty of an offence and is liable on summary conviction to a fine of three times the value of the goods or 5 times the amount at level 2 on the standard scale, whichever is the greater, but which shall in no case be less than level 2 on the standard scale, and, on a second or subsequent offence, shall in addition be liable to imprisonment for six months.

## **Assaulting or resisting customs officers.**

107. A person who, by force or violence, assaults, opposes, resists, molests, hinders or obstructs any customs officer or other person employed in the management or collection of Her Majesty's customs in Gibraltar in the execution of his office or duty, or any person acting in his aid or assistance in the due execution of his office or duty, is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for nine months; and
- (b) on conviction on indictment, to imprisonment for seven years.

## **Obstructing customs officers, etc.**

108. A person who—

- (a) obstructs, hinders, molests or assaults any person engaged in the performance of any duty or the exercise of any power imposed or conferred on him by or under this Act, or any person acting in his aid; or
- (b) refuses entry to a customs officer who is in possession of a search warrant issued under section 98; or
- (c) does anything which impedes or is calculated to impede the carrying out of any search for anything liable to forfeiture under this Act, or the detention, seizure or removal of any such thing; or
- (d) rescues, damages or destroys any thing so liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is so liable to forfeiture; or
- (e) prevents the arrest of any person by a person engaged or acting as aforesaid or rescues any person so arrested,

is guilty of an offence and is liable, on summary conviction, to imprisonment for six months and to a fine at level 5 on the standard scale.

## **Giving false information.**

109.(1) A person who—

- (a) makes or signs, or causes to be made or signed, or delivers, or causes to be delivered, to the Collector or any other customs officer any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by a customs officer,

being a document or statement produced or made in respect of any goods imported or intended to be imported into or exported or intended to be exported from Gibraltar, whether the same be dutiable or not, which is untrue in any material particular, is guilty of an offence.

(2) Without prejudice to subsection (1), a person who commits an offence against this section either knowingly or recklessly is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine at level 4 on the standard scale; and
- (b) on conviction on indictment, to imprisonment for two years and to a fine twice the amount at level 5 on the standard scale.

(3) Where, upon proceedings being taken under this section, it is proved to the satisfaction of the court that the statement is false or that the document is untrue in any material particular, such proof shall be prima facie evidence that the statement which is false or the document which is untrue was made or signed or caused to be made or signed or delivered or caused to be delivered, as the case may be, knowingly or recklessly and the proof that such statement was not made or such document signed or delivered or caused to be delivered knowingly or recklessly shall be upon the person charged.

(4) Where, by reason of any such document or statement, the full amount of any duty payable is not paid or any overpayment is made in respect of any refund, the amount of duty unpaid or the overpayment shall be recoverable in the manner provided under section 98 as a debt due to the Crown.

#### **Counterfeiting documents, etc.**

110. A person who—

- (a) counterfeits or falsifies any document which is required by or under this Act or which is used in the transaction of any business relating to any goods imported or intended to be imported into Gibraltar or exported or intended to be exported from Gibraltar; or



- (b) knowingly accepts, receives or uses any such document so counterfeited or falsified; or
- (c) alters any such document after it is officially issued; or
- (d) counterfeits any seal, signature, initials or other mark of, or used by, any officer for the verification of such document or for the security of goods or for any other purpose relating to the importation or exportation of any goods into or from Gibraltar,

is guilty of an offence and is liable—

- (i) on summary conviction, to imprisonment for six months and to a fine at level 4 on the standard scale; or
- (ii) on conviction on indictment, to imprisonment for two years and to a fine at level 5 on the standard scale.

## **Breaking seals, etc.**

111. (1) A person who wilfully opens any lock, alters any mark or breaks any seal placed upon any goods in any ship, aircraft, vehicle, building or receptacle by a customs officer in pursuance of any power conferred by this Act or, before such lock, mark or seal is lawfully removed, conveys away any of the goods is guilty of an offence.

(2) Where any lock is opened, mark altered or seal broken or any goods are conveyed away contrary to subsection (1), the master of the ship, the commander of the aircraft, the person in charge of the vehicle or the occupier of the building, as the case may be, is guilty of an offence unless he proves that the opening, alteration, breaking or conveying away occurred without his knowledge and was not attributable to any default or neglect on his part.

## **Forfeiture of ship jettisoning cargo, etc.**

112. (1) If any part of the cargo or stores of a ship or any dutiable goods are thrown overboard or are staved or destroyed or **bulk is broken** to prevent seizure—

- (a) while the ship is within the territorial waters of Gibraltar (as defined by section 2 of the Interpretation and General Clauses Act); or

- (b) where the ship, having been properly summoned to bring to by any vessel in the service of Her Majesty (whether in right of the Government of the United Kingdom or the Government of Gibraltar), fails to do so and chase is given, at any time during the chase,

any person present on the ship or who engages in any of the acts listed in this sub-section, is guilty of an offence and the ship shall be liable to forfeiture.

(2) For the purposes of this section a ship shall be deemed to have been properly summoned to bring to—

- (a) if the vessel making the summons did so by means of a flashing blue beacon, a siren, or any other international signal code or other recognised means, and while flying her proper ensign; and
- (b) in the case of a ship which is not a British ship, if at the time when the summons was made the ship was within the territorial waters of Gibraltar.

#### **Unlawful opening of stores.**

113. A person who, except with the authority of a customs officer, opens any of the doors or locks of an approved place, transit shed or private bonded store, or makes or obtains access to any such store or to any goods stored therein, is guilty of an offence.

#### **Other offences related to storage.**

114. A person who, with intent to defraud the Government of any duty chargeable thereon or to evade any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment—

- (a) takes any goods which have been entered for storage into a store without the authority of, or otherwise than in accordance with any directions given by, a customs officer;
- (b) removes any goods which have been entered for storage but have not been duly stored, otherwise than in accordance with the provisions of this Act or any regulations made thereunder;
- (c) unlawfully removes any goods from a store or unlawfully loads any goods which have been stored into a ship, aircraft or vehicle for exportation or use as stores; or

- (d) conceals any goods entered for storage either before or after they have been stored,

is guilty of an offence.

## **Offences by corporations.**

115. Where any offence against this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

## **Assessment of ad valorem penalties.**

116.(1) Where a fine or penalty for any offence against this Act is required to be fixed by reference to the value of any goods, that value shall be taken as the price which those goods might reasonably be expected to have fetched, after payment of any duty or tax chargeable thereon, if they had been sold retail in the open market at or about the date of the commission of the offence for which the penalty is imposed.

(2) Where in any proceedings for an offence against this Act any question arises as to the duty or the rate thereof chargeable on any imported goods and it is not possible to ascertain the relevant time or rate specified in Part V, the duty or rate shall be determined as if the goods had been imported at the time when proceedings were commenced.

## **General penalty.**

117. (1) A person who acts in contravention of any of the provisions of this Act or of any regulations made thereunder or any of the terms or conditions on which any approval or permission has been granted under this Act, is guilty of an offence against this Act.

(2) A person who commits an offence against this Act for which no special penalty is provided is liable, on summary conviction, to a fine at level 4 on the standard scale.

*Rewards.*

## **Rewards.**

118. Subject to the directions of the Financial Secretary as to amount, the Collector may, at his discretion, pay rewards in respect of services which appear to him to merit reward, rendered to him in relation to his duties under this Act.

*Forfeiture.*

**Prohibited imports forfeit to the Crown.**

119.(1) All goods which are prohibited imports under the provisions of this Act or of any other law for the time being in force in Gibraltar shall, on importation, be forfeit to the Crown, whether or not any person is charged with any offence in connection with them.

(2) The court shall, on the application of the Attorney-General, issue a declaratory order that any goods to which subsection (1) applies are forfeited to the Crown.

**Forfeiture of ships and vessels used or suspected of being used for carrying controlled drugs.**

119A. (1) No person shall use attempt to use or allow the use of any ship, as defined in this Act, or any vessel, as defined in the Seaside Pleasure Boats Rules, 1989 made under the Public Health Act in circumstances which—

- (a) if they occur in Gibraltar, constitute an offence under section 15 or 80 of the Imports and Exports Act, 1986; or
- (b) that such use would assist in or induce in Gibraltar the commission in any place outside Gibraltar of an offence punishable under the provisions of a corresponding law in that place.

“Corresponding law” in this part has the meaning ascribed to the expression in section 3 of the Drugs (Misuse) Act.

- (2) (a) Where in respect of any ship or any vessel referred to in subsection (1), the Collector has reasonable grounds for believing that the ship or vessel, as the case may be, has been or is likely to have been, or is used in circumstances falling within paragraph (a) or (b) of that subsection, the ship or vessel, as the case may be, shall be forfeited to the Crown whether or not any person is charged with any offence under section 15 or 80 of the Imports and Exports Act, 1986 or in connection with the use of the ship or vessel, as the case may be.

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- (b) Where a ship or vessel is forfeited to the Crown in circumstances described in subsection 119A(1)(a) or (b) the Collector will by notice to the Owner communicate such forfeiture stating whether paragraph (a) or (b) of subsection 119A(1) is relied on and informing the owner of his right to appeal under subsection 119A(3).
- (3) (a) The owner of any ship or vessel who is aggrieved by a decision made by the Collector pursuant to subsection (2) above, may appeal against the same to the Supreme Court by giving notice in writing to Her Majesty's Attorney General for Gibraltar and to the Registrar of the Supreme Court within one month of the date of the decision against which the appeal is made.
  - (b) If on an appeal as described in subsection 119A(3)(a) the Supreme Court is not satisfied on a balance of probabilities that the circumstances in subsection 119A(2) have been made out then compensation shall be payable to such owner in an amount to be assessed by the Supreme Court but in any event to a maximum level of £5,000, and the ship or vessel shall remain forfeited.
- (4) Provision may be made by rules of court with respect to appeals under subsection (3) above, for the giving of notice of such appeals to persons affected, by the joinder of such persons as parties and generally with respect to the procedure to be adopted on such appeals.
- (5) Subsection (4) is without prejudice to the generality of any existing power to make rules.

## **Mandatory forfeiture of goods.**

120. The court shall, on convicting any person of an offence against any of sections 31, 94, 95 and 103 to 107 order that the goods to which the offence related be forfeited to the Crown.

## **Discretionary forfeiture of goods.**

121. The court may order that goods be forfeited to the Crown if—

- (a) they are goods in relation to which any person has been convicted of an offence against any of sections 16, 20, 21, 33, 80, 81, 84 and 110;
- (b) they were found concealed in or on any ship, aircraft or vehicle;

- (c) they were unloaded or transshipped contrary to section 19 or to the terms and conditions subject to which authority was given for unloading or transshipping; or
- (d) they were imported by post, other than in the course of trade, and were found not to conform to the particulars entered on the declaration form or label affixed to the package.

**Forfeiture of receptacles.**

122. The court which orders the forfeiture to the Crown of any goods shall order also the forfeiture of the receptacles in which they were contained, unless the court is satisfied that there is good reason to order otherwise.

**Mandatory forfeiture of ships, etc.**

123. The court shall order the forfeiture to the Crown of any ship, aircraft or vehicle which is found to have been adapted, altered or fitted in any manner for the purpose of concealing goods, if the court is satisfied—

- (a) that the owner, charterer or master of the ship, commander of the aircraft or person in charge or control of the vehicle knew or, with reasonable diligence would have known of the adaptation, alteration or fitting; and
- (b) that the adaption, alteration or fitting was made to conceal prohibited imports or dutiable goods or that prohibited imports or dutiable goods were discovered therein.

**Discretionary forfeiture of ships, etc.**

124. The court may order that any ship, aircraft or vehicle be forfeited to the Crown if—

- (a) it was employed in the commission of an offence against any of sections 19, 31, 94, 95, 102, 103, 104, 105, 106 and 112;
- (b) it was, at the time of the offence in the ownership or under the control of the offender, or one of the offenders where there are more than one; or
- (c) it is shown to the satisfaction of the court that the owner of the ship, aircraft or vehicle or the master, commander or agent of the ship or aircraft, or the person in charge or control of the vehicle, knew or suspected or had reason to suspect that the

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ship, aircraft or vehicle was being employed in the commission of an offence against this Act.

## **Seizure of goods liable to forfeiture.**

125.(1) Any thing liable to forfeiture under this Act may be seized or detained by any customs officer or police officer.

(2) Where any thing is seized or detained by a police officer as liable to forfeiture and that thing is or may be required in connection with any proceedings to be brought otherwise than under this Act, it may be retained in the custody of the police until either the proceedings are completed or it is decided that no such proceedings shall be brought.

(3) Subject to the provisions of subsection (2), where any thing is seized or detained by a police officer as liable to forfeiture, he shall, as soon as practicable, deliver it to the Collector.

(4) Where any thing is seized or detained by a police officer under this section and cannot immediately be delivered to the Collector, the officer shall give to the Collector notice in writing of the seizure or detention, together with full particulars of the thing seized or detained.

(5) Subject to the provisions of subsection (2) and of Schedule 3, any thing seized or detained under this Act shall, pending the determination as to its forfeiture or disposal, be dealt with and, if condemned or forfeited, shall be disposed of in such manner as the Collector may direct.

(6) A person, other than a customs officer, by whom any thing is seized or detained or who has custody thereof after its seizure or detention, and who fails to comply with any requirement of this section or with any direction of the Collector given thereunder, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

## **Procedure in connection with forfeiture.**

126. Where any goods have, or any ship, aircraft or vehicle has been seized or detained as being liable to forfeiture, the procedure for the giving of notice of the seizure or detention, for claiming that the goods were or the ship, aircraft or vehicle was not liable to forfeiture, and for condemnation shall be governed by the provisions of Schedule 3.

*Stay and Compounding of Proceedings.*

## **Power to stay or compound.**

127. The Collector may, in his discretion, stay or compound any proceedings for an offence or for the condemnation of any thing as being forfeited under this Act.

**PART XI.**

**THE GOVERNMENT AND THE CROWN.**

*Liability of the Government and Government Officers, etc.*

**Liability of the Government, etc.**

128. No claim shall lie against the Government or any officer or servant of the Government—

- (a) in respect of loss or damage to any goods deposited in an approved place or transit shed, except where the loss or damage occurs as the direct result of a wilful act or negligence of the Government or any officer or servant of the Government;
- (b) in respect of the destruction of any goods under section 36 or of any damage resulting from the loss or exposure of any such goods;
- (c) in respect of loss or damage to or in connection, directly or indirectly, with any dutiable goods while they are being conveyed to or kept in any private bonded store.

*Additional Powers of the Government.*

**Power to make Regulations.**

129. The Government may make regulations for carrying into effect the provisions of this Act, for prescribing anything which may be prescribed and in particular, but without prejudice to the generality of the foregoing, may make regulations—

- (a) prescribing the particulars that are to be included in any inward or outward manifest;
- (b) prescribing the charges and fees to be taken for the receipt, storage and delivery of dutiable goods in and from an approved place or transit shed;
- (c) requiring importers and other persons concerned with the importation of goods—



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- (i) to furnish to the Collector in such form as he may require, such information as is in his opinion necessary for a proper valuation of the goods; and
- (ii) to produce any books of account or other documents of whatsoever nature relating to the purchase, importation or sale of the goods by those persons;
- (d) prohibiting the removal from Government stores of goods of any description, either absolutely or subject to any conditions or restrictions;
- (e) prescribing the terms and conditions on which motor spirit may be imported in bulk and stored in Government stores or private bonded stores, as to the payment of the duty thereon and the release of the same for local consumption or for export;
- (f) prescribing the circumstances in which goods liable to duty and on which duty has not been paid or which have been liable to a reduced rate of duty subject to conditions and the conditions have not been satisfied, may be forfeited.

## **Power to remit penalties, etc.**

130. The Government may remit, in whole or in part, any penalties imposed under this Act and may direct that any ship, aircraft or vehicle, receptacle or goods seized under this Act be delivered up to the owner thereof or his agent, whether condemnation has taken place or not, upon such terms and conditions as the Government may deem expedient.

*The Crown.*

## **No application to the Crown.**

131. For the removal of doubt, it is hereby declared that nothing in this Act shall bind the Crown or affect prejudicially any estate, right, power, privilege or exemption of the Crown.

## **PART XII. REPEAL.**

## **Repeal and saving.**

132.(1) The Imports and Exports Act is repealed.

(2) Any proceeding begun for an offence against the Act hereby repealed or for the condemnation of any goods or of any ship, aircraft or vehicle shall continue as if that Act had not been repealed.

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**SCHEDULE 1**

CUSTOMS TARIFF

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**SCHEDULE 2**

*Revoked*

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## SCHEDULE 3

## PROVISIONS RELATING TO FORFEITURE

Section 127

**Notice of seizure.**

1. The Collector shall give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to his knowledge was at the time of the seizure the owner or one of the owners thereof:

Provided that notice shall not be required to be given under this paragraph if the seizure was made in the presence of—

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

2. Notice under the foregoing paragraph shall be given in writing and shall be deemed to have been duly served on the person concerned—

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

**Notice of claim.**

3. Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Collector.

4. Any notice under the last foregoing paragraph shall specify the name and address of the claimant, and, in the case of a claimant who is outside Gibraltar, shall specify the name and address of a legal practitioner in

Gibraltar who is authorized to accept service of process and to act on behalf of the claimant; and service of process upon a legal practitioner so specified shall be deemed to be proper service upon the claimant.

## **Condemnation.**

5. If on the expiration of the relevant period for the giving of notice of claim in respect of anything no such notice has been given to the Collector, or if, in the case of any notice given, any requirement of the last foregoing paragraph is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

6. Where notice of claim in respect of any thing is duly given in accordance with the foregoing provisions of this Schedule, the Collector shall take proceedings for the condemnation of that thing by the magistrates' court and if such court finds that the thing was at the time of seizure liable to forfeiture such court shall condemn it as forfeited.

7. Where any thing is in accordance with either of the two last foregoing paragraphs condemned or deemed to have been condemned as forfeited, then the forfeiture shall have effect as from the date when the liability to forfeiture arose.

## **Proceedings for condemnation by court.**

8. (1) Proceedings for condemnation shall be civil proceedings and in such proceedings the claimant or his agent shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) If the requirement of this paragraph is not complied with, the court shall give judgement for the Collector.

9. Without prejudice to any right to require the statement of a case for the opinion of the Supreme Court, in any proceedings for condemnation instituted in the magistrates' court either party may appeal against the decision of that court to the Supreme Court.

10. In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been set forth in the process without any further evidence thereof, unless the contrary is proved.

11. Where the thing seized is a living creature or is of a perishable nature the Collector may at any time if he sees fit, sell or destroy the same notwithstanding that the thing has not yet been condemned as forfeited.

12. (1) If, where any thing is sold or destroyed as aforesaid, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Collector shall on demand by the claimant tender to him an amount equal to the market value of the thing at the time of its seizure.

(2) If the claimant accepts any amount tendered to him under the foregoing sub-paragraphs, he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing.

(3) For the purpose of this paragraph, the market value of any thing at the time of its seizure shall be taken to be such amount as the Collector and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Government, not being an official of any Government department, whose decision shall be final and conclusive; and the procedure on any reference to a referee shall be such as may be determined by the referee.