

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4411 of 16 November, 2017

LEGAL NOTICE NO. 223 OF 2017.

INTERPRETATION AND GENERAL CLAUSES ACT

**IMPORTS AND EXPORTS ACT, 1986 (AMENDMENT)
REGULATIONS 2017**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to implement in the law of Gibraltar, 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, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Imports and Exports Act, 1986 (Amendment) Regulations 2017.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of Act.

3. In the Imports and Exports Act, 1986, after section 91B, insert the following-

**“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.

(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
- (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.”.

Dated 16th November, 2017.

F R PICARDO,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations implement in the law of Gibraltar, 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.

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