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TOBACCO ACT, 1997

Principal Act

Act. No. 1997-34	<i>Commencement</i>	13.11.1997
	<i>Assent</i>	30.10.1997

Amending enactments	Relevant current provisions	Commencement date
1998-38	ss 22(1)(a)(b), 9 (1)(3)(5), 13(3)	13.8.1998
1999-12	ss. 2, 6(e)(3)(6)(7), 7(1), 8, 9(4), 11, 12, 13(7)(8), 14, 17A to 17D and 18	6.5.1999
2001-16	ss. 2, 11A to 11E	6.6.2001
2006-11	s. 6(6)(g)	7.7.2006
2011-25	ss. 16(4) & 16A	8.9.2011
2013-08	ss. 17(2), (3) & 17AA	30.5.2013
2014-05	ss. 11F & 16 (1) & (2)	27.2.2014
2014-21	ss. 6(3)(ca), (4)(a), 6A, 6B, 8(b), (c), (d)	10.7.2014
2015-03	ss. 11DA & 17C	26.2.2015
2018-10	ss. 17C (2A), (2B), (3A), 24A - 24C	2.8.2018
2019-07	ss. 4A, 6(4)(b), (c)	28.3.2019

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SCHEDULE.

AN ACT TO REGULATE THE LICENSING, SALE, STORAGE AND TRANSPORTATION OF TOBACCO IN GIBRALTAR AND FOR PURPOSES CONNECTED THEREWITH.

PART I
PRELIMINARY

Title and Commencement.

1. This Act may be cited as the Tobacco Act 1997 and shall come into effect on such day as the Government may, by Order in the Gazette, appoint and different days may be so appointed for different purposes and such notice may contain such transitional or other incidental and supplementary provisions as may appear to the Government necessary or expedient.

Interpretation.

2. In this Act unless the context shall otherwise require—

“airport” means the airport at North Front;

“Collector of Customs” has the same meaning as in the Imports and Exports Act 1986;

“commercial premises” means premises which are commercial or club premises and which, in the opinion of the Collector of Customs, are suitable for the conduct of trade in tobacco, but excludes residential premises;

“Subject to sections 11A to 11E, commercial quantity” in relation to cigarettes means 2000 or more cigarettes or such other quantity as the Collector of Customs may, by regulations prescribe; and in relation to other tobacco products means any quantity of tobacco intended for sale or trade;

“Customs Officer” has the same meaning as in the Imports and Exports Act 1986;

“examination station” has the same meaning as in section 10 of the Imports and Exports Act 1986;

“Fast Launches (Control) Act” means the Fast Launches (Control) Act as amended, varied, modified or substituted from time to time;

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“goods vehicle” means a vehicle which is so constructed or adapted as to show that its primary purpose is the carriage of goods or merchandise and which is registered as a goods vehicle under the provisions of the Traffic Act;

“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 electricity, or by any other source of power;

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

“police officer” has the same meaning as in the Police Act and. for the purposes of Part V of this Act includes those officers described in section 51 thereof as civilian police in the employment of the Ministry of Defence;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or moveable structure;

“Recognised Stock Exchange” means a stock exchange which is duly established and validly operating under the laws of the country in which it is established and in which it is operating;

“sale by retail” means selling tobacco to a person being a person who buys it otherwise than for selling or supplying it in the course of a business carried on by him provided that every sale made by the holder of a retail licence shall be deemed to be a sale by retail;

“sale by way of wholesale dealing” means sale to a person who buys for the purpose of selling again;

“tobacco” includes tobacco of every description, whether manufactured or not;

“vessel” has the same meaning as in the Port Act.

PART II LICENSING OF SALES OF TOBACCO

Wholesale licences.

3.(1) It shall be unlawful for any person to sell tobacco by way of wholesale dealing save under the authority of a licence (in this Act referred to as a “wholesale licence”) issued by the Collector of Customs under section 6 below.

(2) Any person who is in any way knowingly concerned in the sale of tobacco by way of wholesale dealing other than under the authority of a wholesale licence issued under section 6 below, shall be guilty of an offence.

(3) Any person who is in any way knowingly concerned in the sale of tobacco by way of wholesale dealing in breach of any condition subject to which a wholesale licence under section 6 below has been issued, shall be guilty of an offence.

Retail licences.

4.(1) It shall be unlawful for any person to sell tobacco by retail save under the authority of a licence (in this Act referred to as a “retail licence”) issued by the Collector of Customs under section 6 below.

(2) Any person who is in any way knowingly concerned in the sale of tobacco by retail other than under the authority of a licence issued under section 6 below, shall be guilty of an offence.

(3) Any person who is in any way knowingly concerned in the sale of tobacco by retail in breach of any condition subject to which a retail licence under section 6 below has been issued, shall be guilty of an offence.

Minimum retail prices of tobacco.

4A.(1) The Collector of Customs may divide types of tobacco sold in Gibraltar into different categories.

(2) Pursuant to subsection (1), where the Collector of Customs divides types of tobacco into different categories he must publish, on a quarterly basis by notice in the Gazette, the minimum retail prices of such categorised tobacco.

(3) The minimum retail prices published by the Collector of Customs in subsection (2) shall not apply to duty free premises within the Departure and Arrivals Halls at the Gibraltar International Airport, Cruise Liner Terminal

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and Ferry Terminal or any other duty free premises designated by the Collector of Customs by order in the Gazette.

Applications for wholesale and retail licences.

5.(1) Every application for a wholesale or retail licence shall be made in the prescribed form.

(2) An application for a wholesale or retail licence for a partnership shall be made in the names of all partners jointly.

(3) An application for a wholesale or retail licence for a company incorporated in Gibraltar or elsewhere shall be signed by all the directors thereof provided that the Collector of Customs may, in his absolute discretion waive or modify this requirement in cases where he is satisfied about the repute of the applicant and that compliance is unduly onerous in practice.

(4) A person who knowingly—

- (a) gives any false information to the Collector of Customs in connection with an application for a wholesale or retail licence, or
- (b) makes any false entry in the prescribed form in respect of any application for a wholesale or retail licence,

shall be guilty of an offence.

Issue of wholesale and retail licences.

6.(1) The Collector of Customs may, subject to subsections (6) and (7) below, in his absolute discretion issue a wholesale or retail licence, subject to such terms, conditions and restrictions as he considers necessary or expedient.

(2) Without prejudice to the generality of subsection (1) above, the Collector of Customs may issue to persons duly licensed to carry on the business of ship agent or ship chandler, a wholesale licence, limited to the sale of tobacco to bona fide merchant shipping.

(3) Without prejudice to the generality of subsection (1) above, every wholesale and retail licence shall be issued only in respect of commercial premises and subject to the following conditions—

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- (a) it shall relate only to the premises specified therein provided that a licence may relate to more than one premises,
 - (b) it shall not be transferable,
 - (c) subject to subsection (3)(ca) where the wholesale or retail licence, as the case may be, is issued to a body corporate, the shareholders and directors thereof may not change, save with the written consent of the Collector of Customs provided—
 - (i) that this condition shall not apply to bodies corporate that are quoted on a recognised stock exchange, and that
 - (ii) the Collector of Customs may, on application, waive this condition in the case of a body corporate of whose repute the Collector of Customs is, in his absolute discretion, satisfied, and which, by reason of the number of its shareholders, would find it impractical to comply with this condition;
 - (ca) the Collector of Customs shall not consent to a change of director or shareholder under paragraph (c) if the holder of a wholesale or retail licence or any of its servants or agents has been charged with an offence under this Act;
 - (d) it shall authorise the licensee to trade as a principal only and on the condition that the licensee does not enter into any transaction as a trustee, agent, nominee or otherwise howsoever on behalf of any third party; and
 - (e) subject to subsection (6) and (7), it may be renewed annually at the absolute discretion of the Collector of Customs.
- (4) Every retail licence shall be issued—
- (a) subject to the condition that it authorises the sale of no more than 200 cigarettes to the same individual at any one time;
 - (b) subject to the condition that it authorises the sale of cigarettes in either individual packets of up to twenty five cigarettes or cartons of a maximum of two hundred and fifty cigarettes, and that the said cartons must each be sold and delivered separately, and may not be sold or delivered in the box in which they were packed by the manufacturer of the cigarettes; and

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- (c) subject to the condition that it authorises the sale of tobacco for no less than the minimum retail prices set by the Collector of Customs pursuant to section 4A.

(5) Every wholesale licence shall be issued subject to the condition that the holder shall, on the occasion of each sale of cigarettes and prior to the delivery of cigarettes so sold, issue an invoice showing the name and address of the purchaser and the quantities and brand of the cigarettes sold, and that the signature of the purchaser shall be obtained on a copy of the said invoice upon the purchaser taking receipt of the cigarettes.

(6) The Collector of Customs shall not issue or renew a wholesale or retail licence to any person who has, at any time within the last two years previous to his application for the issue or renewal of such a licence, been convicted of an offence contrary to this Act or any one or more of the following enactments, namely-

- (a) The Imports and Exports Act 1986;
- (b) The Fast Launches (Control) Act 1987;
- (c) The Port Act or the Port Rules;
- (d) The Drugs (Misuse) Act;
- (e) The Drug Trafficking Offences Act 1995;
- (f) The Criminal Justice Act 1995;
- (g) Section 9 of the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006.

(7) The Collector of Customs shall not issue or renew a wholesale or retail licence to a body corporate where any shareholder (legal or beneficial) directly or indirectly holding or controlling at least ten percent of the issued share capital of the body corporate or any Director thereof has, at any time in the two years previous to the application of the body corporate for the issue or renewal of such a licence, been convicted of any one or more of the offences as are mentioned in subsection (6) above.

(8) Subject to the provisions of subsections (2) above and (12) below, a wholesale licence shall authorise the sale of cigarettes only to the holder of a valid retail licence issued under this section.

(9) The Collector of Customs shall publish in the Gazette details of all holders of such retail licences and, for the purposes of this section only, a person shall be deemed to hold a valid licence until the fact of its revocation has been published in the Gazette.

(10) A wholesale or retail licence issued under subsection (1) above (or a photocopy of it, if it relates to more than one premises) shall, at all times, be displayed in a prominent position on the premises to which it relates.

(11) A licence holder who contravenes the provisions of subsection (10) above shall be guilty of an offence.

(12) Notwithstanding subsection (8) the holder of a valid wholesale licence may sell and deliver cigarettes in any quantity to—

- (a) bona fide merchant shipping,
- (b) bona fide visiting yachts moored or anchored in the port of Gibraltar for the reasonable consumption of its passengers and crew during their voyage; provided that no cigarettes shall be sold or delivered to a fast launch, as defined in the Fast Launches (Control) Act,
- (c) bona fide visiting private and commercial aircraft for exportation from Gibraltar aboard that aircraft,

Provided that all cigarettes so sold shall be delivered by the seller or on his behalf directly to the ship, yacht or aircraft in question.

(13) For the purposes of subsection (12) above, “port of Gibraltar” shall have the same meaning as in the Port Act.

(14) Notwithstanding any other provision hereof to the contrary the holder of a retail licence may loan stocks of cigarettes to another holder of a retail licence, and the holder of wholesale licence may loan stocks of cigarettes to any other holder of a wholesale licence provided that every such loan of stock and the return thereof (which shall take place within 7 days of the loan of the stock) shall be properly recorded in the records of both the lender and the borrower and a loan note issued by the lender and acknowledged by the borrower, showing the brand, description and quantity of the cigarettes loaned and the date and time of the loan and of the repayment of the loaned stock.

Suspension of wholesale and retail licences.

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6A.(1) Where the licence holder of a retail or wholesale licence or any of its servants or agents, has been charged with an offence under this Act, the Collector of Customs may, after informing the licence holder of his intention to do so and the reasons therefor and after giving the licence holder the opportunity to be heard, suspend the licence pending the outcome of any criminal proceedings relating to that offence.

(2) Where a retail or wholesale licence is issued to a body corporate and its directors or shareholders or any of its servants or agents, has been charged with an offence under this Act, the Collector of Customs may, after informing the body corporate of his intention to do so and the reasons therefor and after giving the body corporate the opportunity to be heard, suspend the licence pending the outcome of any criminal proceedings relating to that offence.

(3) For the purposes of this section, a notice of the opportunity to be heard shall—

- (a) give the licence holder or the body corporate not less than fourteen days' notice of the hearing; and
- (b) state the date, time and place of the hearing.

Notice in retail premises.

6B.(1) A notice displaying a statement in such terms as maybe required by the Collector of Customs (and set out by Notice in the Gazette) shall be exhibited at every premises at which tobacco is sold by retail, and shall be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the tobacco.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 297 millimetres by 420 millimetres and the statement shall be such that no character shall be less than 36 millimetres high.

Revocation of wholesale and retail licences.

7.(1) Where the holder of a wholesale or retail licence, or, in the case of a licence held by a body corporate, any director or person, directly or indirectly holding or controlling at least 10 per centum of its shares as the case may be, is convicted of any offence contrary to this Act or any one or more of the following enactments, namely—

- (a) The Imports and Exports Act 1986;

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- (b) The Fast Launches (Control) Act 1987;
- (c) The Port Act or the Port Rules;
- (d) The Drugs (Misuse) Act;
- (e) The Drug Trafficking Offences Act 1995;
- (f) The Criminal Justice Act 1995.

the Collector of Customs shall forthwith revoke the wholesale or retail licence.

(2) Where a wholesale or retail licence has been issued under section 6 above and the licence holder has not, in the opinion of the Collector of Customs, carried on substantial trade or business authorised by the licence for a period of twelve months, the Collector of Customs may, after giving the licence holder the opportunity to be heard, revoke the licence.

(3) Where the holder of a wholesale or retail licence issued under section 6 above has vacated or ceased to occupy or trade from the premises to which the licence relates the Collector of Customs shall, after giving the licence holder the opportunity to be heard, cancel the licence.

(4) Where the Collector of Customs has reasonable grounds to believe that the holder of a retail or wholesale licence has breached any of the terms and conditions subject to which the licence has been issued, he may after informing the licence holder of his intention to do so and the reasons therefor and after giving the licence holder the opportunity to be heard, cancel the licence.

(5) For the purposes of this section, a notice of the opportunity to be heard shall—

- (a) give the licence holder not less than fourteen days notice of the hearing; and
- (b) state the date, time and place of the hearing.

Review of Decisions.

8. Subject to any relevant rule of law any person who is aggrieved by—

- (a) the refusal to issue him with or renew a wholesale or retail licence save when such refusal has been given under section 6(6) or (7) above;

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- (b) any term or condition included in a wholesale or retail licence issued to him save for such a term or condition as is described in section 6(3), (4) and (5) above;
- (c) the revocation or cancellation of a wholesale or retail licence issued to him save when such revocation or cancellation has been made under section 7(1) above;
- (d) the suspension of a wholesale or retail licence issued to him save when that suspension has been made under section 6A above,

may apply to the Supreme Court for judicial review in accordance with rules of court.

PART III IMPORTATION AND EXPORTATION OF TOBACCO

Importation of cigarettes.

9.(1) It shall be unlawful for any person to import cigarettes into Gibraltar in a commercial quantity save under the authority of a permit (in this Act referred to as an “import permit”) issued by the Collector of Customs.

(2) The Collector of Customs may issue an import permit subject to such terms, conditions and restrictions as he considers necessary or expedient.

(3) The Collector of Customs shall not issue an import permit in respect of a commercial quantity of cigarettes to any person other than the holder of a valid wholesale licence issued under section 6 above.

(4) Any person who is in any way knowingly concerned in the importation of cigarettes into Gibraltar in a commercial quantity, other than under the authority of an import permit issued under this section, shall be guilty of an offence.

(5) For the purposes of this Act, cigarettes is deemed to be imported into Gibraltar—

- (a) where the cigarettes is brought by sea, at the time when the vessel carrying it comes within the territorial waters of Gibraltar;

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- (b) where the cigarettes is brought by air, the time when the aircraft carrying it lands in Gibraltar;
- (c) where the cigarettes is brought by land, the time when the vehicle carrying it enters Gibraltar.

Power of Collector of Customs to prohibit or restrict imports of tobacco.

10.(1) The Collector of Customs may, if he considers it necessary or expedient in the public interest from time to time, by regulations, prohibit, restrict or regulate the importation of tobacco or any class of tobacco.

(2) Any person who knowingly imports tobacco into Gibraltar in breach of any regulations made by the Collector of Customs under subsection (1) above shall be guilty of an offence.

Exportation of cigarettes.

11.(1) It shall be unlawful for any person to export or attempt to export cigarettes from Gibraltar in a commercial quantity save under the authority of a permit (in this Act referred to as an “export permit”) issued by the Collector of Customs; provided that this sub-section shall not apply to an export of cigarettes made by any person to whom it been sold in circumstances permitted by, or described in, section 6(2) or section 6(12).

(2) The Collector of Customs may issue an export permit subject to such terms, conditions and restrictions as he considers necessary or expedient.

(3) The Collector of Customs shall not issue an export permit to any person other than the holder of a valid wholesale licence issued under section 6 above.

(4) An export permit shall only authorise the exportation of cigarettes in a commercial quantity—

- (a) by sea, from the North Mole, the South Mole or any other place where a vessel is berthed or anchored with the authority of the Captain of the Port or, as the case may be, of the Queen’s Harbour Master;
- (b) by air, from the airport;
- (c) by land, through the examination station at Four Corners.

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(5) Any person who is in any way knowingly concerned in the exportation or attempted exportation of commercial quantities of cigarettes from Gibraltar other than under the authority of an export licence issued under this section shall be guilty of an offence.

(6) For the purposes of this Act, cigarettes is deemed to have been exported from Gibraltar by sea at the time when it is loaded onto any vessel.

(7) For the purposes of this Act cigarettes is deemed to have been exported from Gibraltar by land at the time when any vehicle in which it is being carried enters the loop road leading to the frontier gates by which vehicular traffic exits from Gibraltar.

(8) For the purposes of this Act, an attempt to export cigarettes from Gibraltar by sea is deemed to have been committed at any time when the goods are in the process of being carried or transferred between a vehicle and a vessel.

Establishment of Special Zones.

11A. The Chief Minister may, by notice in the Gazette, declare any part or parts of Gibraltar to be a Special Zone for the purposes of this Act.

Application of Part III and IV in Special Zones.

11B. For all purposes connected with the application of Part III and IV in Special Zones declared under section 11A, a reference to a “commercial quantity” in relation to cigarettes shall be construed as a reference to 600 cigarettes or such other number as the Chief Minister may, from time to time, prescribe by notice in the Gazette.

Offence of requesting or procuring the exportation of cigarettes.

11C.(1) Subject to subsection (3), it shall be an offence for a person in a Special Zone declared under section 11A to request or procure any other person to export or assist with the exportation of cigarettes by land.

(2) A person guilty of an offence contrary to subsection (1) shall be sentenced on summary conviction to a fine at level 2 on the standard scale or, in default, to imprisonment for 14 days.

(3) Subsection (1) shall not apply to any request or procurement made by or to any person licensed under this Act to export or to transport tobacco.

Preventive powers of enforcement of police and customs officers.

11D.(1) Subject to subsection (2), where a police or customs officer believes that a person's presence in a Special Zone declared under section 11A is primarily related to the exportation of cigarettes by land the police or customs officer may direct that person to leave the Special Zone.

(2) A person who fails to comply as soon as practicable with a direction under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine at level 2 on the standard scale.

Additional powers of stop and search in Special Zone.

11DA.(1) Within a Special Zone, declared as such pursuant to section 11A, a police or customs officer may, on a random basis and without the requirement for there to be reasonable grounds for believing that an offence has been or is being committed, stop any person or vehicle for the purposes of making enquiries.

(2) Where a person or vehicle has been stopped pursuant to subsection (1) and police or customs officer has reasonable grounds for believing that an offence has been or is being committed, that officer may search that person, any vehicle and any other persons in that vehicle.

(3) No person shall be searched under subsection (2) except by an officer of the same sex.

(4) A person who obstructs a police or customs officer when exercising the powers under subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 5 of the standard scale.

(5) The provisions of this section are without prejudice to the provisions in section 17C and 17D.

Offence of concealing cigarettes.

11E.(1) It shall be an offence for a person in a public place to place cigarettes under his clothing or the clothing of any other person so as to conceal them.

(2) Subsection (1) shall not apply where the amount concealed is less than 60 cigarettes or such other number as the Chief Minister may, from time to time, prescribe by notice in the Gazette.

(3) For the avoidance of doubt, subsection (1) does not apply where the act of concealment was not carried out in a public place; and, for these purposes, an act of concealment shall be deemed not to have been carried

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out in a public place where the cigarettes were placed under the clothing in a place other than a public place.

(4) A person guilty of an offence contrary to subsection (1) shall be sentenced on summary conviction to a fine at level 2 on the standard scale.

Offence of concealing cigarettes within a motor vehicle.

11F.(1) It shall be an offence for a person—

- (a) to conceal or be in any way knowingly concerned with the concealment of cigarettes within a motor vehicle; or
- (b) to be in charge of a motor vehicle in which cigarettes are concealed.

Provided that it is a defence to an offence under paragraph (b) for a person to prove that he did not know, and neither suspected nor had reason to suspect, that cigarettes were concealed within the motor vehicle.

(2) For the purposes of this section “conceal” means—

- (a) placing cigarettes within a compartment or place adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) placing cigarettes within the engine compartment of a vehicle;
- (c) placing cigarettes within the bodywork, wheels or tyres of a vehicle,

and “concealed” and “concealment” are to be construed accordingly.

(3) A person guilty of an offence contrary to subsection (1) shall be liable—

- (a) where the number of cigarettes concealed is not a commercial quantity, on summary conviction to a fine not exceeding £10,000 or three times the value of the cigarettes in respect of which the offence was committed whichever is the greater;
- (b) where the number of cigarettes concealed is a commercial quantity, on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £10,000 or three times the value of the cigarettes in respect of which the

offence was committed whichever is the greater or to both such imprisonment and such fine.

PART IV
STORAGE AND TRANSPORTATION OF TOBACCO

Storage of cigarettes.

12.(1) It shall be unlawful for any person to store cigarettes in a commercial quantity in any premises other than those specified in a wholesale or retail licence issued to him under section 6 above.

(2) Any person who stores cigarettes in a commercial quantity in any premises not so specified in a wholesale or retail licence issued to him under section 6 above shall be guilty of an offence.

Transportation of cigarettes.

13.(1) It shall be unlawful for any person to transport or carry cigarettes in a commercial quantity in any vehicle in Gibraltar except—

- (a) in a motor vehicle issued with a licence under this Act (in this Act referred to as a “tobacco transportation licence”) by the Collector of Customs; or
- (b) in a goods vehicle in which the tobacco has been imported into Gibraltar through the examination station at Four Corners.

(2) A tobacco transportation licence under subsection (1)(a) above may only be issued in respect of a goods vehicle operated by the holder of a valid wholesale or retail licence issued under section 6 above or by a duly licensed road transport contractor in the ordinary course of his business.

(3) Any person who transports or carries cigarettes in a commercial quantity in Gibraltar in contravention of subsection (1) above shall be guilty of an offence.

(4) A tobacco transportation licence issued under subsection (1) above shall at all times be clearly displayed on the right hand side of the windscreen of the vehicle to which it relates.

(5) A tobacco transportation licence holder who contravenes the provisions of subsection (4) above shall be guilty of an offence.

(6) The Collector of Customs shall revoke a tobacco transportation licence as soon as it appears to him that the vehicle to which it relates has changed ownership.

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(7) Notwithstanding the provisions of subsections (1) to (6) above, no offence shall be committed under this section if cigarettes are carried in a motor vehicle and the quantity of cigarettes carried in the motor vehicle, although a commercial quantity, does not exceed 1,999 cigarettes per adult occupant of the motor vehicle at the time.

(8) For the purpose of subsection (7), “adult occupant” means an occupant of the vehicle aged 16 years or over.

Possession of cigarettes.

14.(1) It shall be unlawful for any person to be in possession of cigarettes in a commercial quantity in Gibraltar except—

- (a) the holder of a valid retail licence, in manner and circumstances permitted by that licence;
- (b) the holder of a valid wholesale licence, in manner and circumstances permitted by that licence;
- (c) the holder of a tobacco transportation licence, in manner and circumstances permitted by that licence;
- (d) an officer acting on behalf of the Crown in the execution of his duties.

(2) Any person who is in possession of cigarettes in a commercial quantity in Gibraltar in contravention of subsection (1) above, shall be guilty of an offence

PART V PENALTIES AND ENFORCEMENT

Penalties.

15.(1) A person guilty of an offence under sections 3(2), 3(3), 4(2), 4(3), 9(4), 10(2), 11(5), 12(2), 13(3) or 14(2) of this Act shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £10,000 or three times the value of the tobacco in respect of which the offence was committed whichever is the greater or to both such imprisonment and such fine.

(2) A person guilty of an offence under sections 5(4), 6(11) or 13(5) of this Act shall be liable on summary conviction to a fine not exceeding £10,000.

(3) Where an offence under this Act which is 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 or manager, of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Forfeiture.

16.(1) The court shall, on convicting any person of an offence mentioned in section 11F(1), section 13(1) or section 13(3) above and upon an application to that effect being made by or on behalf of the Attorney General or the prosecuting officer order that the cigarettes to which the offence related be forfeited to the Crown.

(2) The court shall, on convicting any person of an offence contrary to section 11F(1), section 13(1) or section 13(3) above and upon an application to that effect being made by or on behalf of the Attorney General or the prosecuting officer order that the motor vehicle or goods vehicle to which the offence relates be forfeited to the Crown.

(3) The court shall, on convicting any person of an offence contrary to section 11 above, in respect of an exportation by sea, and upon an application to that effect being made by or on behalf of the Attorney General or the prosecuting officer order that the vessel involved in the commission of the offence be forfeited to the Crown.

(4) Where the court directs that any vessel, motor vehicle or goods vehicle be forfeited to the Crown under this section, the same shall be disposed of in such manner as the Collector of Customs may direct.

Disposal of cigarettes by auction.

16A.(1) This section applies to cigarettes which—

- (a) a court has ordered be forfeit to the Crown; or
- (b) have otherwise come into the possession of the police or customs and are not subject to any claim.

(2) Any cigarettes to which subsection (1) applies, if they are of merchantable quality, may be auctioned by or on behalf of the Government in accordance with the provisions of this section.

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(3) An auction of cigarettes under this section shall only be open to persons who hold a valid wholesale licence issued under section 6.

(4) The proceeds of an auction under this section shall be paid into the Consolidated Fund.

(5) The Government shall destroy any cigarettes to which this section applies if it believes such cigarettes are not of merchantable quality.

Provisions as to detention and seizure of goods.

17.(1) Any thing liable to forfeiture under this Act may be seized or detained by any Police or Customs Officer.

(2) Any thing seized or detained under subsection (1) above as being liable to forfeiture shall be retained in the custody of the Police or Customs Officer, as the case may be, until—

- (a) any criminal proceedings brought in respect thereof are concluded; or
- (b) it is decided that no such proceeding should be brought; or
- (c) an order is made under subsection (3) in relation to that thing.

(3) On an application made by the Attorney General or a claimant of the thing the magistrates' court may—

- (a) make an order for the delivery of the thing to the person appearing to the court to be the owner thereof; or
- (b) make such other order with respect to the thing as the court may think fit.

Power to make orders with respect to property in possession of Police or Customs Officer.

17AA. Where any property, other than property liable to forfeiture under this Act, has come into the possession of a Police or Customs Officer in connection with any criminal offence under this Act, the magistrates' court may, on the application of the Attorney General or by a claimant of the property—

- (a) make an order for the delivery of the property to the person appearing to the court to be the owner thereof; or,

- (b) make such other order with respect to the property as the court may think fit.

Power to arrest

17A.(1) A police or customs officer shall have the power to arrest any person who has, in his opinion, committed or attempted 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 by a customs officer shall be handed over into the charge of a police officer as soon as practicable.

Power to require information

17B.(1) A police or customs officer may require any person whom he reasonably suspects is concerned, in circumstances contrary to the provisions of this Act, in the importation or exportation of cigarettes, or in the transportation or possession of cigarettes, to furnish, in such form as the officer may require, any information relating to the cigarettes and to produce and allow the officer to inspect and take extracts from or make copies of any permit, certificate or licence, invoice, bill of lading, Book of account or other book or document whatsoever relating to the cigarettes.

(2) A person who fails to comply with the provisions of subsection (1) is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

Power to enter and search premises etc.

17C.(1) Every police or customs officer shall have free access to any vessel or aircraft at the port or airport and of any vehicle in Gibraltar where there are reasonable grounds to suspect that cigarettes may be found in that vessel, aircraft or motor vehicle in circumstances contrary to the provisions of this Act, and may –

- (a) lock up, seal, mark or otherwise secure any cigarettes found in the vessel, aircraft or motor vehicle or any place or receptacle in which they are so carried; or
- (b) break open any place or receptacle which is locked and of which the keys are not available to the police or customs officer.

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(2) Any person who, in the circumstances described in subsection (1) refuses to permit any vessel, aircraft or motor vehicle to be searched when so required by a police or customs officer is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

(2A) Every police or customs officer shall have free access to any premises which are specified in a retail licence issued under section 6, for the purposes of ensuring compliance with the provisions of this Act or a licence issued hereunder.

(2B) Any person who wilfully obstructs a police or customs officer acting in pursuance of subsection (2A) shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5 on the standard scale.

(3) Where it is proven by a police or customs officer on oath to a Justice of the Peace that there is reasonable cause to believe—

- (a) that cigarettes may be found at any premises in Gibraltar in circumstances contrary to the provisions of this Act; and
- (b) that admission to the premises has been refused, or that a refusal is apprehended, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier, or
- (c) that as application for admission, or the giving of such a notice, would defeat the object of the entry, or
- (d) that the case is one of urgency, or
- (e) that the premises are unoccupied or the occupier is temporarily absent,

the Justice may by warrant under his hand authorise the police or customs officer to enter the premises, if need be by force.

(3A) Subsection (3) does not apply to premises to which subsection (2A) applies.

(4) Any person who wilfully obstructs a police or customs officer acting in pursuance of subsection (3) above shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5 on the standard scale.

Power to search persons.

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17D.(1) Where there are reasonable grounds to suspect that any person, in circumstances contrary to the provisions of this Act, is in possession of any cigarettes, or is importing or exporting any cigarettes, or is intending to import or export any cigarettes, a police or customs officer may search him and any article he has with him.

(2) No person shall be searched under subsection (1) except by an officer of the same sex.

Protection of officers in relation to the exercise of powers under this Part.

18.(1) Where, in any proceedings for an offence under this Act, the defendant is acquitted the court may, if it sees fit, certify that there were reasonable grounds for the exercise by any police or customs officer of any powers or of any discretion granted under sections 17 to 17D.

(2) Where any proceedings, whether civil or criminal, are brought against any police or customs officer or the Attorney General, on account of the exercise of any powers or of any discretion granted under sections 17 to 17D, and judgment is given for the plaintiff or prosecutor, then if either –

- (a) a certificate has been granted under subsection (1) above; or
- (b) the court is satisfied that there were reasonable grounds for the exercise by the police or customs officer of any powers or of any discretion granted under sections 17 to 17D,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.

(3) Any certificate under subsection (1) above may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it is granted.

Evidence.

19.(1) An averment in any process in proceedings under this Act–

- (a) that the Collector of Customs has or has not granted a wholesale or retail licence under Part II of this Act;
- (b) that the Collector of Customs has or has not issued a tobacco transportation licence under section 13 of this Act;

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- (c) that the Collector of Customs has or has not issued an import permit under section 9 or an export permit under section 11 of this Act;

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

(2) Where, in any proceedings under this Act, any question arises as to the place from which any tobacco has been brought or as to whether or not-

- (a) any duty has been paid or secured in respect of any tobacco; or
- (b) any tobacco is of the description or nature alleged in the information, indictment, writ or other process; or
- (c) any tobacco has been imported, unloaded, sold or removed from any place; or
- (d) any tobacco has been lawfully loaded into any ship, aircraft, motor vehicle or goods vehicle or lawfully exported;
- (e) any tobacco was lawfully brought to any place for the purpose of being loaded into any ship, aircraft, motor vehicle or goods vehicle or exported; or
- (f) any tobacco is or was subject to any prohibition or restriction on their importation imposed by the Collector of Customs under section 10 of this Act,

and where those proceedings are brought by or against the Crown or the Attorney General or any police or customs officer or against any other person in respect of anything purported to have been done in pursuance of any power or duty conferred or imposed on him by or under this Act, the burdens of proof shall lie upon the other party to the proceedings.

Exceptions.

20.(1) Nothing in this Act shall apply-

- (a) to any tobacco carried aboard any aircraft, any passenger ship, merchant ship, military ship or yacht at the time that it arrives in Gibraltar, provided that such tobacco is not unloaded, transferred or otherwise discharged in Gibraltar, or

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- (b) to any tobacco aboard such aircraft, passenger ship, merchant ship, military ship or yacht sold and delivered in Gibraltar in a manner permitted by this Act.

(2) The provisions of section 13 and 14 shall not apply in respect of the transportation and possession during bona fide commercial deliveries of tobacco by hand delivery or hand pushed cart or trolley from a vehicle issued with a tobacco transportation licence or from commercial premises to which a wholesale licence relates to any premises to which a wholesale or retail licence relates.

(3) Section 16(3) shall not apply to any passenger ship, merchant ship, military ship or pleasure yacht unless, in the case of pleasure yachts, in the opinion of the court, one of the principal purposes for that pleasure yacht's visit to Gibraltar was the commission of an offence under section 11 above.

(4) For the purposes of subsection (3) above, the court shall have regard to all material circumstances including, but without prejudice to the generality of the foregoing, whether the type of yacht concerned is of a type similar to those commonly used for the commission of offences contrary to the provisions of this Act.

Restriction on the institution of proceedings.

21. Proceedings for any offence or offences contrary to this Act shall not be instituted against any person except by or with the consent of the Attorney General.

Returns.

22.(1) The holder of a wholesale licence shall make and certify as being complete and correct the following returns—

- (a) separate returns for each day containing separately for each brand of cigarette, the particulars set out in the Schedule to this Act relating to—
 - (i) all cigarettes removed from the licensed premises that day for sale within Gibraltar, and
 - (ii) all cigarettes removed from the licensed premises that day for export;
- (b) a monthly return containing such details as are necessary to show the balance of stocks of cigarettes in hand at the beginning of each month and the receipts during the month as

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against deliveries during that month and stocks in hand at the end of that month;

- (c) such other returns, containing such information as the Collector of Customs may prescribe by Regulations.

(2) A person required to make returns under subsection (1) above shall furnish them to the Collector of Customs within fourteen days of the end of the month to which they relate.

(3) Any person required to make and furnish returns under this section who fails to make the said return or furnish the same by the due date shall be liable to pay a penalty of £500 and to a further penalty of £50 for each day, after the first, on which the failure to make or furnish the said return continues.

Keeping and inspection of records.

23.(1) Save as the Collector of Customs may otherwise allow, the holder of a wholesale licence issued under Part II of this Act and any other person commercially concerned with the importation, exportation, supply or transportation of tobacco shall keep all documents and other records which relate to the receipt, storage, sale, disposal, transportation, importation or exportation of such tobacco and shall retain them for not less than one year from the date on which they were issued.

(2) If requested to do so by a police or customs officer the holder of a wholesale licence issued under Part II of this Act and any other person concerned with the commercial importation, exportation, sale, supply or transportation of tobacco shall produce any relevant documents or other records to which subsection (1) above applies for inspection by the officer at any reasonable time and place and in a readily legible form, and shall allow the officer to make extracts from, copy or remove the documents or other records for a reasonable period.

(3) A wholesale licence holder or other person referred to in subsection (2) above who—

- (a) fails to produce his wholesale licence upon being requested to do so by a police or customs officer; or
- (b) fails to produce such documents as are mentioned in subsection (2) above upon being requested to do so by a police or customs officer; or

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- (c) hinders or obstructs a police or customs officer in the exercise of his powers under this Part of this Act,

shall be guilty of an offence and, on summary conviction, shall be liable to a fine not exceeding level 5 on the standard scale.

(4) Save as the Collector of Customs may otherwise allow, the holder of a wholesale licence shall keep all the documents or other records which he is required by subsection (1) above to retain, at the relevant licensed premises or at the holder's principal place of business in Gibraltar; provided that any such address other than the licensed premises, is specified in the licence as the address at which such records are kept and may be inspected.

Power to make regulations.

24.(1) The Chief Minister may make regulations generally for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Chief Minister may make regulations in order to regulate the forms to be used and the fees to be paid in respect of the issue of licences and permits.

Assaulting or resisting officers.

24A. A person who, by force or violence, assaults, opposes, resists, molests, hinders or obstructs any police or customs officer in the execution of his office or duty is guilty of an offence and is liable—

- (a) on summary conviction to imprisonment for 9 months; and
- (b) on conviction on indictment to imprisonment for 7 years.

Obstructing officers, etc.

24B. 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
- (b) 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

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- (c) rescues, damages or destroys anything 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
- (d) 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 a fine at level 5 on the standard scale.

Giving false information.

24C.(1) A person who—

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

being a document or statement produced or made in respect of any tobacco, 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 on summary conviction to imprisonment for 6 months and to a fine at level 5 on the standard scale.

PART VI

REPEALS AND TRANSITIONAL PROVISIONS

Repeal of Sections 25 and 26 of the Licensing and Fees Act.

25. Sections 25 and 26 of the Licensing and Fees Act are hereby repealed.

Repeal of Section 91 of the Imports and Exports Act 1986.

26. Section 91 of the Imports and Exports Act 1986 is hereby repealed.

Revocation of Part III of the Licensing Rules.

27. Part III of the Licensing Rules are hereby revoked.

Transitional Provisions.

28.(1) All extant tobacconists licences issued under Section 25 of the Licensing and Fees Act prior to this Act coming into force shall remain in force for a period of three months thereafter or for such further period as the Chief Minister may, by regulations, prescribe.

(2) A tobacconists licence issued under Section 25 of the Licensing and Fees Act shall be deemed to licence the storage of tobacco in Gibraltar in accordance with the provisions of this Act for a period of three months from the date on which this Act comes into effect or for such further period as the Chief Minister may, by regulations, prescribe.

(3) Notwithstanding any other provision hereof to the contrary, no offence shall be committed under section 13 above in respect of any act or event occurring prior to the date of three calendar months after the date of commencement of this Act.

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SCHEDULE

Particulars to be given in returns by the licence holder

A. Under Section 22(1) (a) (i)

1. Delivery document of delivery schedule number.
2. Stock reference.
3. Brand.
4. Size of retail pack.
5. Number of packs per package.
6. Number of packages.
7. The number of cigarettes and the retail price.
8. Any undercharges or credits
9. The full name and address of the consignee.

B. Under Section 22(1) (a) (ii)

1. Purpose for which delivered.
2. Delivery document number.
3. Stock reference.
4. Total number of packages.
5. Total quantity or number of retail packs.
6. (a) For tobacco exported, the consignee's full name and address.
(b) For tobacco removed to other premises licensed under this Act, the consignee's name and address.
(c) For tobacco removed for destruction or other disposal, the place.