

# Tobacco Act 1997

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## Principal Act

<b>Act. No. 1997-34</b>	<i>Commencement (LN.1997/137)</i>	13.11.1997
	<i>Assent</i>	30.10.1997

Amending enactments	Relevant current provisions	Commencement date
1998-38	ss. 9(1), (3), (5), 13(3), 22(1)(a)-(b)	13.8.1998
1999-12	ss. 2, 6(3)(e), (6)-(7), 7(1), 8, 9(4), 11-12, 13(7)-(8), 14, 17A-17D, 18	6.5.1999
2001-16	ss. 2, 11A-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)-(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
LN. 2020/214	ss. 2, 6(3)(aa)-(ac), 11G, 12(1)-(2), 13(2), 14(1)(ba), 14A-14J, 14ZI-14ZK, 15(2), 16(1), 16A, 22(1)(a), 23(1), 24D-24O, Sch.,1-2	30.6.2020

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**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;

“cigarette” means a tobacco product that can be consumed by means of a combustion process and which is—

- (a) a roll of tobacco (or of tobacco and another substance) capable of being smoked as it is, but which is not a cigar or a cigarillo; or
- (b) a roll of tobacco (or of tobacco and another substance) which is designed to be, by simple non-industrial handling—
  - (i) wrapped in cigarette paper, or
  - (ii) inserted into a cigarette-paper tube;

“cigar” means a tobacco product that can be consumed by means of a combustion process and, given its properties and normal consumer expectations, is exclusively intended to be smoked as it is, and which is—

- (a) a roll of tobacco (or of tobacco and another substance) which has an outer wrapper of natural tobacco; or
- (b) a roll of tobacco (or of tobacco and another substance) which—

- (i) has an outer wrapper-
  - (aa) of the normal colour of a cigar,
  - (bb) made of reconstituted tobacco, and
  - (cc) covering the product in full (including the filter but not, in the case of a cigar with a mouthpiece, the mouthpiece),
- (ii) is filled with a threshed blend of tobacco (or of tobacco and another substance),
- (iii) has a unit weight, not including any filter or mouthpiece, of not less than 2.3 grams and not more than 10 grams, and
- (iv) has a circumference, over at least one third of its length, of not less than 34 millimetres;

“cigarillo” means a cigar with a unit weight of not more than 3 grams;

“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;

“Convention” means the World Health Organisation Framework Convention on Tobacco Control adopted on 21 May 2003;

“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;

“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;

“hand-rolling tobacco” means a tobacco product-

- (a) in relation to which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimetres;
- (b) which is sold or intended to be sold for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device; or
- (c) which is of a kind used for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device;

“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;

“Protocol” means the Protocol to Eliminate Illicit Trade in Tobacco Products adopted on 12 November 2012;

“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;

“supply chain” means an activity undertaken pursuant to-

- (a) a permit under Part III (Importation and Exportation of Tobacco);
- (b) a licence issued under Part IVA (Manufacturing of Tobacco Products); or
- (c) any other activity that requires a licence or permit under this Act and which the Minister specifies by Notice in the Gazette;

“tobacco” includes tobacco of every description, whether manufactured or not, and unless the context requires otherwise, includes any product that is made with or contains tobacco;

“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 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—

- (a) it shall relate only to the premises specified therein provided that a licence may relate to more than one premises,
  - (aa) it shall not be issued to a person under the age of 18 years,
  - (ab) the licensee must not require or permit an employee under the age of 18 years to sell tobacco,
  - (ac) the licensee must disclose such information about the contents and emissions of tobacco products as the Collector of Customs requires,
- (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
  - (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.**

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;
- (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;
- (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;
- (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.

(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 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.

*Record keeping*

**Record-keeping: importers and exporters.**

11G.(1) Every person engaged in the importation of tobacco under the authority of a permit issued under section 9(1) or the exportation of tobacco under the authority of a permit under section 11(1) must maintain complete and accurate records of all relevant transactions.

- (2) The following must be made available to the Collector of Customs upon request-
  - (a) general information on market volumes, trends, forecasts and other relevant information; and
  - (b) the quantities of tobacco products in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
- (3) In the case of tobacco sold for export, or subject to duty suspended movement in transit or transshipment under the authority of a permit under section 11(1) and if the Collector of Customs requests, the permit holder must at the time of export and by electronic means provide the Collector of Customs with the following information-
  - (a) the date of shipment from the last point of physical control of the products;
  - (b) the details concerning the products shipped (including brand, amount, warehouse);
  - (c) the intended shipping routes and destination;
  - (d) the identity of the natural or legal person to whom the products are being shipped;
  - (e) the mode of transportation, including the identity of the transporter;
  - (f) the expected date of arrival of the shipment at the intended shipping destination; and
  - (g) intended market of retail sale or use.
- (4) The records referred to in subsection (1) must be-
  - (a) maintained for at least four years;
  - (b) made available to the Collector of Customs; and
  - (c) maintained in a format that may be specified by the Collector of Customs.
- (5) A person commits an offence if that person -

- (a) fails to comply with the provisions of this section regarding the making and keeping of records; or
- (b) does not provide information or records when required to do so by this section or when required by the Collector of Customs to do so.

and, on summary conviction, is liable to a fine not exceeding level 5 on the standard scale.

**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 or a manufacturing licence issued under section 14A.

(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 or a manufacturing licence issued under section 14A 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 a manufacturing licence issued under section 14A 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.

(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;
- (ba) the holder of a valid manufacturing 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 IVA  
MANUFACTURING OF TOBACCO PRODUCTS**

**Regulation of the manufacturing of tobacco products.**

14A.(1) No person may undertake the manufacture of tobacco products unless authorised to do so under a licence issued by the Collector of Customs and a licence may be issued subject to such terms, conditions and restrictions as he considers necessary or expedient.

(2) A licence issued under this section may be suspended, amended, revoked and renewed.

(3) Conditions may be included, amended or removed from any licence and at any time by the Collector.

(4) A licence issued under subsection (1) is, unless the licence states otherwise, valid for a maximum period of 12 months from the date of issue.

**Application for licence: information requirements.**

14B.(1) An applicant for a licence under section 14A must provide such information as the Collector of Customs requires, including-

- (a) where the applicant is a natural person, information regarding that person's identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;
  - (b) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;
  - (c) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;
  - (d) details of the tobacco products covered by the application, such as product description, name, registered trade mark if any, design, brand;
  - (e) documentation or a declaration regarding any criminal records;
  - (f) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and
  - (g) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand.
- (2) In any application for a renewal or variation of a licence, the applicant must provide the information set out in subsection (1) where there has been any change to the information supplied to the Collector of Customs at the time of the original application.



**Consent to changes.**

14C. The prior written consent of the Collector of Customs is required-

- (a) before any change of location of the business; and
- (b) before any significant change in information relevant to the activities as licensed.

**Conditions of a licence.**

14D. A licence issued under this Part must be subject to the following conditions-

- (a) it is not transferable; and
- (b) the licensee must disclose such information about the contents and emissions of tobacco products as the Collector of Customs requires.

**Inspections etc.**

14E. The Collector of Customs must undertake such periodic review, renewal, inspection or audit of licences issued under section 14A as the Collector of Customs deems appropriate.

**Unlicensed activity.**

14F. A person who undertakes an activity set out in section 14A without a licence commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

**Breach of condition in licence.**

14G. A person who breaches a condition of a licence issued under section 14A and 14D commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

**Forfeiture.**

14H.(1) Where a court is satisfied that an offence has been committed contrary to any provision in this Part, that court may, in addition to any penalty that it may have imposed, and upon giving notice to show cause why a forfeiture order should not be made, order the forfeiture of the tobacco products used in or for the commission of the offence.

- (2) Tobacco products forfeited under this section must be destroyed.

*Record keeping*

**Record-keeping: manufacturer.**

14I.(1) Every person engaged in the manufacturing of tobacco products must maintain complete and accurate records of all relevant transactions and such records must allow for the full accountability of materials used in the production of the tobacco products.

- (2) The following must be made available to the Collector of Customs upon request-
- (a) general information on market volumes, trends, forecasts and other relevant information; and
  - (b) the quantities of tobacco products in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
- (3) The records referred to in subsection (1) must be-
- (a) maintained for at least four years;
  - (b) made available to the Collector of Customs; and
  - (c) maintained in a format that may be specified by the Collector of Customs.
- (4) A person who fails to comply with the provisions of this section or with a request by the Collector of Customs is guilty of an offence and, on summary conviction, is liable to a fine not exceeding level 5 on the standard scale.

*Restrictions on unlicensed tobacco products*

**Restrictions on unlicensed tobacco products.**

14J. A person who sells, whether by wholesale or retail or exports a tobacco product that is manufactured in Gibraltar other than in accordance with a licence issued under section 14A commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**PART IVC  
MISCELLANEOUS**

**Licensed person not to acquire tobacco from unlicensed person.**

14ZI.(1) A person (A) who is licensed under this Act commits an offence if A purchases tobacco from another person (B) and A knows or ought reasonably to know that B does not have a licence to sell that tobacco to A.

(2) It is a defence to the commission of an offence under subsection (1) if A proves that A took all reasonable steps to ascertain that B was licensed for the purposes of selling tobacco to A.

**Offences on Gibraltar registered ships.**

14ZJ. Conduct which would constitute an offence under this Act if done on land in Gibraltar constitutes that offence if done on a ship registered in Gibraltar.

*False signs, markings etc.*

**False signs, markings etc.**

14ZK. A person who, in relation to any tobacco product-

- (a) manufactures;
- (b) sells, whether by wholesale or retail;
- (c) imports; or
- (d) exports,

any packaging or labelling which consists of or includes any sign, marking or label which that person knows or ought reasonably to know is false, that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**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), 6C, 13(5), 14C, 14ZI(1) or 24F 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 and destroyed.

(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 unclaimed tobacco.**

16A. The Government must destroy tobacco that comes into the possession of the police or customs if that tobacco is not subject to any claim.

#### **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.

(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.**

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;
- (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
- (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 Schedule 1 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 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 in such format as the Collector of Customs may require and shall retain them for not less than four years 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
  - (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
- (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 VA  
PROVISIONS OF GENERAL APPLICATION**

*Due diligence*

**Requirement to conduct due diligence.**

24D.(1) This section applies to any person who is engaged in the supply chain of tobacco.

(2) A person falling within subsection (1) must-

- (a) conduct due diligence before the commencement of and during the course of, a business relationship;
- (b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and
- (c) report to the Collector of Customs any evidence that the customer is engaged in activities in contravention of its obligations arising from this Part.

(3) For the purposes of subsection (2)(a) due diligence includes requirements for customer identification, such as obtaining and updating information relating to the following-

- (a) establishing that the natural or legal person holds all relevant licences;
- (b) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;
- (c) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, registered office and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification.

#### **Compliance with requirements.**

24E.(1) The Collector of Customs may, on the basis of the information reported to it under section 24D(2)(c) take all necessary measures to ensure compliance with the obligations arising under this Act and may designate a customer as a blocked customer.

- (2) Where a person has been designated as a blocked customer by the Collector of Customs-
  - (a) any existing business relationship shall be terminated by the parties to that business relationship; and
  - (b) no person may enter into a business relationship with the blocked customer whilst any such designation remains in force.

#### **Reporting of suspicious transactions.**

24F.(1) Where the holder of a licence or permit issued under this Act knows or has reasonable cause for believing that a transaction is or may be concerned with the diversion of manufacturing machinery or the funds realised in connection with the sale of that machinery (a "suspicious transaction") that person must, report the suspicious transaction to the Collector of Customs, before the transaction takes place or as soon as is reasonably practicable after the transaction has been concluded.

(2) Where requested by the Collector of Customs, the holder of the licence or permit must provide such further information regarding the suspicious transaction as the Collector of Customs requires.

(3) Nothing in this section requires a person to provide any information which a court may not compel that person to provide in any criminal proceedings.

(4) A person who without reasonable excuse fails to comply with the provisions of this section commits an offence.

**PART VB**  
**MUTUAL ADMINISTRATIVE ASSISTANCE**

**Mutual Administrative Assistance.**

24G.(1) The Collector of Customs may, whether in response to receipt of a request or on his own initiative provide information of a kind described and to the authorities set out in Article 15(4)(a) of the Convention or Article 28 of the Protocol.

(2) Where information has been provided to the Collector of Customs pursuant to Article 15(4)(a) of the Convention or Article 28 of the Protocol that information may not, without the consent of the sender, be used for any purpose other than for the purposes for which it was sent.

**PART VC**  
**MUTUAL LEGAL ASSISTANCE**

**Mutual legal assistance.**

24H.(1) A request for mutual legal assistance under Convention or the Protocol may be made or received if-

- (a) the criminal conduct relates to a relevant offence; and
- (b) assistance falls within the scope of-
  - (i) this Act, or
  - (ii) an enactment that for, the purposes of seeking or providing that assistance, is to be treated as having been modified by this Part.

(2) Nothing in subsection (1) affects the ability to make or receive requests for mutual legal assistance under any enactment.

(3) In this section “relevant offence” means an offence that is included in the Schedule.

**Oral request for assistance in urgent cases.**

24I. A requirement for a request to be made in writing under an enactment specified in section 24L or 24M may-

- (a) if urgent; and
- (b) subject to the prior agreement of the authority to whom requests for assistance are made under that enactment,

be made orally, and if made orally must be confirmed in writing forthwith.

**Disclosure to accused person.**

24J.(1) Where as a result of a request for mutual legal assistance, information or evidence is received or, as the case may be, provided which is exculpatory to an accused person, any restriction on the disclosure to that person does not apply.

(2) In any case where subsection (1) applies the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party save that in an exceptional case, if advance notice is not possible, the requesting Party must inform the requested Party of the disclosure without delay.

**Modification of Mutual Legal Assistance (International) Act.**

24K.(1) The Mutual Legal Assistance (International) Act 2005 is deemed to be modified in accordance with the provisions of this section.

(2) In section 3-

(a) after section (2)(b) insert-

“(c) where the request involves a criminal offence where the maximum penalty in Gibraltar is less than 2 years imprisonment;

(d) if, in the opinion of the Central Authority, the provision of the assistance would impose a burden on resources that is disproportionate to the seriousness of the crime; and

(e) if the authorities in Gibraltar would be prohibited by Gibraltar law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings in Gibraltar,

and where the Central Authority or the court refuses any request for assistance, reasons shall be provided.

(3) Without prejudice to paragraph 4(3) of Schedule 1, the Central Authority or a court may postpone acting on a request for assistance where acting on it may interfere with an ongoing investigation, prosecution or judicial proceeding.

(4) If it is likely that a request for assistance is to be refused or postponed the Central Authority or the court must consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary and if the requesting State accepts assistance subject to those conditions the request may be acted on subject those terms and conditions.”.

(3) After section 12 insert-

**“Confidentiality of requests.**

12A.(1) The fact and substance of a request received by the Central Authority must not be disclosed to any person except to the extent necessary to execute the request.

(2) Where in any case it is not possible to comply with the requirement of confidentiality set out in subsection (1) the Central Authority must promptly inform the requesting State.”.

(4) After section 20 insert-

**“Hearing by videoconference or other audiovisual transmission.**

20A.(1) This section applies where a request is made to the Central Authority for the hearing of a witness or expert witness by videoconference or other audiovisual transmission at the attendance of that witness or expert witness in person in the requesting State is not possible or desirable the Central authority may agree the practical arrangements with the requesting State.

(2) Before acceding to a request under subsection (1) the Central Authority must be satisfied that that the person named in the request has made a written statement consenting to hearing by videoconference or other audiovisual transmission.

(3) The Central Authority must ensure that the witness or expert witness is informed of the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission.

(4) The following apply where a hearing is held by videoconference or other audiovisual transmission-

- (a) the Gibraltar executing authority shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the



identity of the person to be heard and that the fundamental principles of law are respected;

- (b) where the Gibraltar executing authority is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (c) measures for the protection of the witness or expert witness person shall be agreed, where necessary, between the Competent Authority and the competent authority of the issuing State;
- (d) in advance of the hearing, the witness or expert witness may claim a right not to testify if that right would accrue under the law of the issuing State or under Gibraltar law.

(5) Unless the Competent Authority and the competent authority in the requesting State agree to dispense with the provisions of this subsection, and without prejudice to any measures which may have been introduced under subregulation (4)(c), on the conclusion of the hearing the Competent Authority shall draw up minutes indicating-

- (a) the date and place of the hearing;
- (b) the identity of any person heard;
- (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
- (d) any oaths taken; and
- (e) the technical conditions under which the hearing took place,

and the Competent Authority shall forward the minutes referred to the competent authority in the issuing State.”.

(5) For section 22 substitute-

“22.(1) The ordinary costs of executing a request in Gibraltar, unless otherwise agreed with the requesting State, are to be borne by the Government of Gibraltar.

(2) If expenses of a substantial or extraordinary nature are or will be required to fulfil the request for assistance, the Central Authority may shall consult the requesting State to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.”.

**Modification of UN Transnational Organised Crimes Act.**

24L. The United Nations Transnational Organised Crime Act 2006 is deemed to be modified in section 2 by substituting the definition ““relevant offence” means an offence that is punishable in Gibraltar by imprisonment for a term of four years or more;” with ““relevant offence” means an offence that is so defined under the Tobacco Act 1997;”.

**Relevant offences to be treated as indictable offences.**

24M. The-

- (a) Mutual Legal Assistance (International) Act 2015;
- (b) Criminal Procedure and Evidence Act 2011;
- (c) Proceeds of Crime Act 2015,

and any subsidiary legislation made under an enactment in paragraphs (a) to (c), are modified to the extent in any such enactment a reference to an indictable offence includes a relevant offence.

**PART VD  
EXTRADITION****Application and modification of Extradition Act.**

24N.(1) Where a request for extradition is made pursuant to Article 30 of the Protocol the Extradition Act 2018 applies to that request subject to subsection (2).

(2) For the purposes of subsection (1) conduct that is or falls within conduct that is a relevant offence constitutes an extradition offence for the purposes of that Act and in particular as regards the conduct in sections 72(2)(b), (3)(b) and (4)(b) and 73(2)(b), (3)(b) and (4)(b).

(3) In this section “relevant offence” means an offence that is included in Schedule 2.

**Additional rights.**

24O. Where a person has been detained in custody under section 7 or 9 of the Extradition Act 2018 in relation to a relevant offence, in addition to any other rights that may accrue under that Act, the detained person is entitled to-

- (a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and
- (b) be visited by a representative of that State.

**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.

**SCHEDULE 1**

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.

**SCHEDULE 2**

**Relevant Offences**

The following sections are “relevant offences”.

**Tobacco Act, 1997-**

- Section 6C Prohibition on cross-border distance selling
- Section 9 Importation of cigarettes
- Section 11 Exportation of cigarettes
- Section 14F Unlicensed activity.
- Section 14O Prohibition from supply of non-compliant tobacco products.

**Tobacco Products (Manufacturing Machinery) Regulations 2020-**

- Regulation 5 Requirement for a licence.
- Regulation 7 Conditions and restrictions.
- Regulation 24 Obstructing officers etc.