

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,101 of 6th May, 1999**

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I ASSENT,

RICHARD LUCE,

GOVERNOR.

6th May, 1999.



**GIBRALTAR**

**No. 12 of 1999**

**AN ACT** to amend the Tobacco Act 1997

**ENACTED** by the Legislature of Gibraltar .

**Title**

1. This Act may be cited as the Tobacco Act 1997 (Amendment) Act, 1999.

**Amendments to the Tobacco Act 1997**

2.(1) The Tobacco Act 1997 shall be amended in accordance with the provisions of this section.

(2) Section 2 shall be amended by substituting for the words “having three or more wheels,” the words “having two or more wheels,” where they appear in the definition of “motor vehicle”.

(3) Section 6 shall be amended as follows –

(a) for paragraph (e) of subsection (3), there shall be substituted the following paragraph –

“(e) subject to subsections (6) and (7), it may be renewed annually at the absolute discretion of the Collector of Customs.”.

(b) for the words in subsection (6) “The Collector of Customs shall not issue a wholesale or retail licence to any person who has, at any time,” there shall be substituted the following words

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“The Collector of Customs shall not issue or renew a wholesale or retail licence to any person who has, at any time within the two years previous to his application for the issue or renewal of such a licence-”;

(c) for subsection (7) there shall be substituted the following subsection -

“(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,

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been convicted of any one or more of the offences as are mentioned in subsection (6) above.”.

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(4) Section 7(1) shall be amended by substituting for the words “any such offence as is mentioned in section 6(5) above,” the words –

“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.”.

(5) For section 8, there shall be inserted the following section –

**“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; or
- (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,

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

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(6) Section 9 shall be amended as follows -

- (a) for the title “Importation of tobacco” there shall be substituted the title “Importation of cigarettes”;
- (b) subsection (4) shall be amended by substituting for the word “tobacco” the word “cigarettes”.

(7) Section 11 shall be amended by substituting for references to “tobacco” references to “cigarettes” and by substituting the word “cigarettes” for the word “tobacco” in the title.

(8) Section 12 shall be amended by substituting for the title “Storage of tobacco”, the title “Storage of cigarettes”.

(9) Section 13 shall be amended as follows –

- (a) for the title “Transportation of tobacco” there shall be substituted the title “Transportation of cigarettes”;
- (b) subsection 7 shall be amended by substituting for the words “does not exceed 1000 cigarettes per occupant of the motor vehicle at the time.”, the words–

“does not exceed 1,999 cigarettes per adult occupant of the motor vehicle at the time.”;

- (c) after subsection (7), there shall be inserted the following subsection–

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

(10) Section 14 shall be amended shall be amended by substituting for the title “Possession of tobacco”, the title “possession of cigarettes”.

(11) The following sections shall be inserted after section 17 –

**“Power of 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 brought into 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

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- (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.

(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 an 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.

(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.”.

(12) For section 18, there shall be substituted the following section –

**“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.”.

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Passed by the Gibraltar House of Assembly on the 26th day of April, 1999.

M. B. CATANIA,  
Acting Clerk to the Assembly.

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