



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1384 of 24th June 2005
LEGISLATION

THE CUSTOMS ORDINANCE 2005
ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

1. Short title.
2. Interpretation.
3. Importations and exportations.
4. Application and effects.

PART 2
ADMINISTRATION AND CONTROLS

5. Powers and duties of Fiscal Officer and officers.
6. Cooperation and assistance.
7. Examination of persons, goods and means of transport.
8. Appointments and authorisations.
9. Customs stations.

PART 3
PORTS, AIRPORTS AND CROSSING POINTS

10. Customs ports.
11. Approved wharves.
12. Customs airports.
13. Examination stations.
14. Restrictions on ships and aircraft.
15. Crossing points.

PART 4
SEA AND AIR TRANSPORT

16. Application of Part 4.
17. Lodging of cargo manifest on arrival of ship.
18. Lodging a cargo manifest before clearance outwards.
19. Notice of arrival.
20. Force majeure.

21. Lodging a cargo manifest of an aircraft.
22. Clearance outwards of ships and aircraft.
23. Stores.
24. Unloading at approved place.

**PART 5
OFFICERS' POWERS**

25. Access to customs ports and airports and the keeping of records.
26. Access to approved wharves etc.
27. Powers in relation to ships, aircraft and vehicles.
28. Power to prohibit persons.
29. Power to detain ship or aircraft before clearance.
30. Withdrawal of clearance.
31. Direction to unload.

**PART 6
SUPERVISION AND STORAGE OF GOODS**

32. Approval of temporary storage facilities.
33. Storage in temporary storage facilities.
34. Controls over goods in temporary storage facilities.
35. Time limits for storage.

**PART 7
DUTIES, TAXES AND OTHER CHARGES**

36. Charging of duties, taxes and other charges.
37. Goods delivered without payment of duty.

**PART 8
CUSTOMS DEBT**

38. Customs debt.
39. Communication of customs debt.
40. Persons supplying information liable for customs debt.
41. Regulations.

**PART 9
OTHER CUSTOMS DEBT**

42. Other customs debt.
43. Incurrence of other customs debt.

**PART 10
PROVISIONS IN RELATION TO CUSTOMS DEBT AND
OTHER CUSTOMS DEBT**

44. Guarantees.
45. Notification of assessment of other customs debt.
46. Notification to personal representatives etc.
47. Recovery of amounts not legally due.
48. Financial penalty.
49. Interest.

**PART 11
CUSTOMS PROCEDURES**

- 50. Customs declaration.
- 51. Regulations for simplified procedures.
- 52. Regulations for customs procedures.
- 53. Application of section 34 to warehousing.
- 54. Abandonment, destruction and sale of goods.

**PART 12
PASSENGERS' BAGGAGE**

- 55. Passengers' baggage.
- 56. Questions of persons entering or leaving the Areas.

**PART 13
EXPLOSIVES AND POSTAL GOODS**

- 57. Explosives etc.
- 58. Regulations for postal goods.

**PART 14
UNCLEARED GOODS**

- 59. Uncleared goods.
- 60. Destruction of uncleared goods.
- 61. Fees for warehousing.
- 62. Costs for special handling.
- 63. Sales at auction.
- 64. Proceeds of sale.
- 65. Unsold goods.

**PART 15
CUSTOMS RELIEFS AND REPRESENTATION**

- 66. Customs reliefs.
- 67. Customs representation.

**PART 16
GENERAL POWERS**

- 68. Power of entry to places subject to customs supervision.
- 69. Examination of imported goods and goods to be exported.
- 70. Production of information and documents.
- 71. Entry and search.
- 72. Search for goods liable to forfeiture etc.
- 73. Stop and search of vehicles and ships.
- 74. Search of persons.

- 75. Application and definitions of section 74.
- 76. Removal and copying of documents.
- 77. Use of force.
- 78. Powers in relation to search.
- 79. Use of scientific equipment.
- 80. Rewards.
- 81. Arrest without warrant.

PART 17
RETURN OF PROPERTY AND COMPENSATION

- 82. Return of property.
- 83. Compensation.
- 84. Amount of compensation.

PART 18
CRIMINAL OFFENCES

- 85. Falsely assuming character of Fiscal Officer obstruction and other offences.
- 86. Fraudulent evasion of duty and other offences.
- 87. Untrue documents and declarations.
- 88. Offences of failure to comply.
- 89. Failure to comply with conditions or restrictions.
- 90. Offences of failing to keep books and records.
- 91. Contravention of prohibition or restriction.
- 92. Offences in relation to exportation of prohibited or restricted goods.
- 93. No conviction of both an offence under the Ordinance and corresponding offence.
- 94. Offence of removal from storage.

PART 19
DETENTION, SEIZURE AND FORFEITURE

- 95. Detention and seizure of goods as liable to forfeiture.
- 96. Goods liable to forfeiture.
- 97. Detention where untrue export declaration.
- 98. Forfeiture of larger ships.
- 99. Forfeiture of ship, aircraft or vehicle constructed to conceal goods.
- 100. Forfeiture of ship jettisoning cargo etc.
- 101. Forfeiture of ship or aircraft unable to account for missing cargo.

**PART 20
REVIEW AND APPEAL**

- 102. Reviews of decisions.
- 103. Power of Chief Officer on review.
- 104. Appeals.
- 105. Regulations for reviews and appeals.

**PART 21
PROCEEDINGS AND OTHER MATTERS**

- 106. Civil and criminal proceedings.
- 107. Power to compound.
- 108. Valuation for the purpose of penalties.
- 109. Liability of directors etc.
- 110. Service of notices and other documents.
- 111. Certificates from the Fiscal Officer.
- 112. Customs Register.
- 113. Regulations for Customs Register, books and records.
- 114. Retention and proof of records.
- 115. Proof of certain matters.
- 116. Documents produced to the Fiscal Officer.
- 117. Further provision by regulations.

**PART 22
SAVINGS, REPEALS AND COMMENCEMENT**

- 118. Savings.
- 119. Repeals.
- 120. Application to the Crown and commencement.

SCHEDULES:

Schedule 1

Provisions Relating to Forfeiture.

Schedule 2

Repeals.

**AN ORDINANCE
TO MAKE PROVISION FOR
THE LAW RELATING TO CUSTOMS AND EXCISE**

P. T. C. Pearson CBE
ADMINISTRATOR

23rd June 2005.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**PART 1
PRELIMINARY**

Short title.

1. This Ordinance may be cited as the Customs Ordinance 2005.

Interpretation.

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

“Act of Accession” means the Act concerning the Accession of the Republic of Cyprus to the European Union;

“aircraft” means any aircraft, seaplane, flying boat, helicopter or any other contrivance, whether having means of propulsion or not, that is capable of flight, whether by itself or in conjunction with another aircraft;

“approved wharf” is a place approved under section 11(1) of this Ordinance or article 46 of the Code;

“assigned matter” means any matter in relation to which the Fiscal Officer is required in pursuance of any enactment including this Ordinance to perform any duties or is given any powers relating to the import, export or other movement of goods or any other thing relating to customs, excise, duty, tax or other charges;

“associated legislation” means any Areas or Community legislation other than customs legislation which relates to an assigned matter;

“authorised person “ means any person who is authorised by the Fiscal Officer under section 8;

“Class A drug”, “Class B drug” and “Class C drug” have the meanings given by section 3 of the Narcotic Drugs and Psychotropic Substances Ordinance 1980 and the classifications of Schedule 1 to that Ordinance;

Ordinance
13/1980 as
amended by
Ordinance 7/1983
and Ordinance
9/2003

“Code” means the Regulation of the Council of the European Communities of 12 October 1992 (EEC) No. 2913/92 establishing the Community Customs Code;

OJ L 302 of
19.10.1992,
page 1.

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

“Community” means the European Community;

“container” includes a bundle, package, box, cask and any other receptacle;

“controlled drugs” has the meaning given in section 3 of the Narcotic Drugs and Psychotropic Substances Ordinance 1980;

“corresponding” means having effects which are similar or substantially similar;

“court” means the Judge’s Court of the Sovereign Base Areas;

“crossing point” means a place designated under section 15 for the movement of goods by land into and out of the customs territory;

“customs agent” means a person who is approved under section 67 to act as a customs agent in accordance with article 5 of the Code ;

“customs airport” means an area designated under section 12 for the purposes of customs and excise law as a place for the landing or departure of aircraft;

“customs approved treatment or use” means –

- (a) the placing of goods under a customs procedure;
- (b) entry of goods into a free zone or free warehouse;
- (c) re-exportation of goods from the customs territory of the Community;
- (d) destruction of goods;
- (e) abandonment of goods to the Administration;

“customs duty” means import duty and export duty as defined in article 4 of the Code;

“customs legislation” means this Ordinance and any other enactment relating to customs or excise including enactments of the European Community which apply in the Areas;

“customs port” means an area designated under section 10;

“customs procedure” means-

- (a) release for free circulation;
- (b) transit;

- (c) customs warehousing;
- (d) inward processing;
- (e) processing under customs control;
- (f) temporary admission;
- (g) outward processing; or
- (h) exportation;

“customs station” means a place designated under section 9;

“customs territory” includes the land, the territorial waters and the air space of the Areas;

“document” includes records and all other information kept in any form including any which has been electronically recorded;

“duty” means import duty and export duty as defined in article 4 of the Code and any other duty or tax chargeable on importation or exportation (except where it is used in the terms “customs duty” , “excise duty” or to refer to the duty of an officer or other person);

“examination station” means a place approved under section 13(1);

“excise duty” means any excise duty chargeable under any enactment;

“export duties” has the meaning given by article 4 (11) of the Code;

“goods” includes cargo, stores and baggage but does not include documents;

“holder” in relation to any goods includes any owner, importer, exporter, shipping agent or carrier or any other person who holds or has an interest in those goods;

“Implementing Regulation” means the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code;

“import duties” has the meaning given by article 4 (10) of the Code;

“Island of Cyprus” excludes any area not under the effective control of the government of the Republic;

“line” means the line between the areas in the Island of Cyprus in which the Government of the Republic does not exercise effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland;

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

“member State” means a member State of the European Community;

“officer” means an officer of customs and excise appointed or commissioned by the Fiscal Officer;

“other charges” means any amounts other than duties and taxes which are chargeable on importation or exportation and include agricultural levies;

“Protocol” means the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland attached to the Act of Accession (Protocol 3);

“Republic” means the Republic of Cyprus but except where the context requires it does not include any area in the Island of Cyprus not under the effective control of the government of the Republic;

“ship” includes any boat, hovercraft and any other vessel whatsoever;

“stores” means goods for use in a ship or aircraft or for sale by retail to persons carried in a ship or aircraft and fuel, spare parts and other articles of equipment whether or not for immediate fitting;

“tax” means value added tax and any other tax imposed on the importation of goods;

“temporary storage facilities” means a place approved under section 32(1);

“territorial waters” means those parts of the territorial waters of the former Colony of Cyprus not to be claimed by the Republic under section 3 of Annex A to the Treaty of Establishment 1960;

“territory of a member State” means the territory of a member state of the European Community but does not include any territory on the Island of Cyprus where the government of the Republic does not exercise effective control;

“territory of the Republic” does not include any area in the Island of Cyprus not under the effective control of the government of the Republic;

“transit of goods within the Areas” means the movement from one point to another within the Areas or within the Republic and the Areas, of goods on which duties or taxes are due;

“Treaty of Establishment” means the Treaty concerning the Establishment of the Republic of Cyprus and the associated Exchanges of Notes dated 16 August 1960;

“value added tax” has the meaning given in the Value Added Tax Ordinance 2001.

(2) Any word or phrase not defined in this Ordinance but defined or used in the Code or Implementing Regulation shall bear the meaning given by the Code or Implementing Regulation as the case may be.

(3) Any reference to Community legislation in general or specifically shall be construed as a reference to such legislation as amended or substituted from time to time.

3.—(1) Except where they arrived directly from or are moving directly to the territory of the Republic no goods or any other thing may be imported into or exported from the Areas except through a customs port, customs airport or crossing point designated by the Administrator.

Ordinance
10/01 as amended
by Ordinances
16/02, 36/02,
38/03, 25/05,
41/04 and
Public Instrument
18/03.

Importations and
exportations.

(2) Subject to the provisions of this section any goods which have been imported into the territory of the Republic and are subsequently removed from the territory of the Republic to the Areas shall be considered for the purposes of this Ordinance as if they had been imported into the Areas by sea or air.

(3) Any condition or restriction imposed upon any importation into the territory of the Republic under any Republican enactment (if such condition or restriction could lawfully have been imposed under any enactment of the Areas in relation to goods actually imported into the Areas) is to be treated as having been imposed under such enactment of the Areas.

(4) Except as permitted under customs legislation or by the Fiscal Officer goods imported from outside the customs territory of the Community shall not be delivered or removed on importation until the importer has paid all duty which is due.

Application and effects.
No 866/2004
OJ L 161
30.4.2004.
No.293/2005 OJ
L 50/1 23.2.2005.

4.—(1) Subject to and in accordance with Council Regulation of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession, Council Regulation of 17 February 2005 amending that Regulation and any other applicable Community legislation arising from the arrangements made under Protocols 3 and 10 to the Act of Accession this Ordinance shall apply in relation to the line and its crossing points as it applies in relation to the external borders of the Areas and customs ports and customs airports.

Ordinance
11/ 2004.

(2) Subject to the effects of Protocol 3 and the European Communities (Protocol Measures) Ordinance 2004 nothing in this Ordinance shall—

- (a) affect the operation of the Treaty of Establishment in the Areas; and
- (b) except in relation to goods liable to forfeiture under this Ordinance or the exercise of a power to arrest, restrict the movements (in any direction) of goods or persons between the Areas and the Republic or between the Areas and member States.

PART 2 ADMINISTRATION AND CONTROLS

Powers and duties
of Fiscal Officer
and officers.

5.—(1) The Fiscal Officer shall act subject to the general supervision of the Chief Officer.

(2) The Fiscal Officer in accordance with customs and associated legislation is charged with—

- (a) the duty of assessing, collecting and accounting for duties, indirect taxes and other charges imposed by law;
- (b) applying the provisions of this Ordinance, the Code and its Implementing Regulation and other customs and associated legislation which apply in the Areas;
- (c) the enforcement of prohibitions and restrictions on the importation and exportation of goods;
- (d) the investigation of offences under customs legislation, excise legislation and associated legislation.

(3) Any act or thing required or authorised by or under any

enactment to be done by the Fiscal Officer may be done by an officer or other person acting under the authority of the Fiscal Officer.

(4) Any statement signed by the Fiscal Officer certifying that a person specified in the statement was, at a time and for a purpose so specified, an officer or was acting under the authority of the Fiscal Officer shall be admissible in evidence.

(5) Any person, whether an officer or not, engaged by the authority of or with the concurrence of the Fiscal Officer (whether previously or subsequently expressed) in the exercise of any power or performance of any duty relating to an assigned matter which is by law required or authorised to be performed by or with an officer, shall be deemed to be the proper officer by whom that power may be exercised or duty performed.

(6) Any person acting by virtue of subsection (5) shall have all the powers of an officer in relation to any act performed or to be performed by him.

6.—(1) For the purpose of implementing Community obligations the Fiscal Officer shall cooperate with other customs services on matters of mutual concern and may for that purpose—

Cooperation and assistance.

- (a) in accordance with such arrangements as he may direct or as prescribed by regulations, give effect to any Community requirement or practice as to the movement of goods between countries, including any rules requiring payment to be made in connection with the exportation of goods to compensate for any relief from customs duty allowed or to be allowed (and may recover any such payment as if it were an amount of customs duty unpaid); and
- (b) give effect to any reciprocal arrangements with member States (which may include arrangements with other countries or territories) for securing by the lawful exchange of information or otherwise, the due administration of their customs laws and the prevention or detection of fraud or evasion.

(2) It shall be the duty of every police officer and member of Her Majesty's armed forces to provide assistance in the enforcement of the law relating to any assigned matter.

7.—(1) Except where a person has or goods have come from the territory of the Republic the Fiscal Officer may at any customs port, customs airport or crossing point examine any person, goods, vehicle and other means of transport.

Examination of persons, goods and means of transport.

(2) The purposes for which the power in subsection (1) may be exercised are—

- (a) to detect the illegal presence or movement of—
 - (i) controlled drugs and psychotropic or toxic substances;
 - (ii) weapons, explosives, nuclear or other hazardous material;
 - (iii) funds arising from or intended to be used in economic criminal activities;
 - (iv) cultural goods;

- (v) pirated and counterfeit goods;
- (vi) obscene items;
- (vii) other restricted or prohibited goods, and

(b) to detect customs offences and other offences in respect of assigned matters.

Appointments and authorisations.

8.—(1) The Fiscal Officer may appoint any person as an officer of customs and excise (“officer”) or authorise any person (“authorised person”) to perform any duties relating to an assigned matter subject to any conditions which he might impose.

(2) Any act or thing required or allowed by this Ordinance to be done by an officer may be done by the Fiscal Officer.

Customs stations.

9.—(1) The Fiscal Officer may by notice designate any place as a customs station.

(2) A customs station is a place under the supervision of the Fiscal Officer where customs controls, examinations and searches may be carried out.

PART 3 PORTS, AIRPORTS AND CROSSING POINTS

Customs ports.

10. The Administrator may by order designate any area including territorial waters as a customs port for customs and excise purposes.

Approved wharves.

11.—(1) The Fiscal Officer may approve as an approved wharf for such periods and subject to such conditions and restrictions as he may impose, any place in any customs port for—

- (a) the loading and unloading of goods; or
- (b) the embarkation and disembarkation of passengers and crew.

(2) The Fiscal Officer may revoke or vary an approval given under subsection (1).

Customs airports.

12. The Administrator may by order designate any area as a customs airport for customs and excise purposes.

Examination stations.

13.—(1) The Fiscal Officer may approve as an examination station for such periods and subject to such conditions and restrictions as he may impose any place at a customs airport for—

- (a) the loading and unloading of goods; or
- (b) the embarkation and disembarkation of passengers and crew.

(2) The Fiscal Officer may at any time revoke or vary any approval given under subsection (1).

Restrictions on ships and aircraft.

14.—(1) This section does not apply where—

- (a) a ship or aircraft is travelling or intended to travel only between places in the Areas or the Areas and the territory of the Republic (in either direction) and in the territorial waters of the Areas or the Republic; and
- (b) the ship or aircraft is not carrying goods which were loaded or passengers who embarked outside the Areas or

the territory of the Republic.

(2) The master of a ship shall not cause or allow the ship to arrive at or leave from a place which is not a customs port.

(3) The commander of an aircraft shall not cause or allow the aircraft to arrive at or leave from a place which is not a customs airport.

(4) No person may load or unload goods from a ship or an aircraft or embark or disembark at a place which has not been approved by the Fiscal Officer under section 11 or 13.

(5) The master of a ship or commander of an aircraft must not permit any person to act in breach of subsection (4).

15. The Administrator may by order designate any place at or near the line as a crossing point for the purposes of the Protocol and for customs and excise purposes.

Crossing points.

PART 4 SEA AND AIR TRANSPORT

16. This Part does not apply where—

Application of Part 4.

(a) a ship or aircraft is travelling or intended to travel only between places in the Areas or the Areas and the territory of the Republic (in either direction) or in the territorial waters of the Areas or the Republic; and

(b) the ship or aircraft is not carrying goods which were loaded or passengers who embarked outside the Areas or the territory of the Republic.

17.—(1) The master of a ship arriving at a port or mooring within territorial waters must lodge with the Fiscal Officer a cargo manifest within 24 hours from the ship's arrival.

Lodging of cargo manifest on arrival of ship.

(2) Subsection (1) applies even if the ship is in ballast and even if the arrival or mooring was due to force majeure.

(3) No goods shall be unloaded before a cargo manifest is lodged except—

(a) with the consent of the Fiscal Officer; and

(b) at a place approved by the Fiscal Officer.

(4) The Fiscal Officer may prescribe in relation to the cargo manifest (which may be in electronic form) —

(a) requirements as to its form; and

(b) the procedures for lodging it.

(5) The Fiscal Officer may require the production of any document relating to the goods listed on the cargo manifest.

(6) The master of a ship is not obliged to comply with this section when the ship departs without free pratique.

(7) The Fiscal Officer may allow the cargo manifest for a cargo ship, passenger ship or car ferry, lodged under subsection (1), to list only the goods destined for the port of arrival.

(8) Each vehicle of international transport on board a ship carrying

goods covered under a title of international transit must be included in the cargo manifest separately for each vehicle.

Lodging a cargo manifest before clearance outward.

18.—(1) The Fiscal Officer may require that the master of a ship, prior to the clearance outwards from the first port of arrival, lodge a cargo manifest in accordance with section 17.

(2) The Fiscal Officer may make a requirement under subsection (1) even if the ship is in ballast.

(3) The master of a ship after its arrival at a second port (including where its first port of arrival was in the territory of Republic) shall lodge with the Fiscal Officer a cargo manifest in accordance with section 17.

Notice of arrival.

19. The shipping agent or other representative of the operator of a ship shall notify the Fiscal Officer at least 12 hours in advance of the expected arrival of a ship and supply additional information as required.

Force majeure.

20. If a ship is moored due to force majeure and its repair is required, the goods on board may be unloaded with the consent of the Fiscal Officer and stored in places approved by the Fiscal Officer.

Lodging a cargo manifest of an aircraft.

21.—(1) The commander of an aircraft must lodge with the Fiscal Officer a cargo manifest within 24 hours of the arrival or 3 hours before the departure of the aircraft whichever is the sooner.

(2) The provisions of section 17(3), (4) and (5) shall apply in relation to an aircraft.

Clearance outward of ships and aircraft.

22.—(1) Save as permitted by the Fiscal Officer, no ship or aircraft shall depart from any customs port or customs airport from which it commences, or at which it stops during, a voyage or flight to an eventual destination outside the Areas or the territory of the Republic until clearance of the ship or aircraft for that departure has been obtained from an officer.

(2) No goods shall be loaded on a ship or aircraft for exportation or for use as stores without the consent of the Fiscal Officer, unless an application for clearance outwards of the ship or aircraft has been lodged in accordance with subsection (3).

(3) The Fiscal Officer may by notice prescribe—

- (a) the procedure for obtaining clearance outwards of a ship or an aircraft;
- (b) the documents to be produced and the information to be furnished by any person applying for such clearance.

(4) Where clearance is sought under this section for any ship which is in ballast or has on board no goods other than stores, the baggage of passengers carried in that ship, or empty returned containers upon which no freight or profit is earned, the officer in granting clearance shall, on the application of the master, clear the ship as in ballast.

Stores.

23.—(1) Subject to applicable Community Law and provisions relating to excise duties and value added tax the Fiscal Officer may permit goods to be shipped as ships stores or aircraft stores without payment of duties or taxes subject to such conditions as he may impose.

- (2) The Fiscal Officer may direct-
- (a) the quantity and type of goods which may be carried as stores in any ship or aircraft;
 - (b) the type of ship in which goods may be carried as stores;
 - (c) the method by which the goods may be taken to a ship for use as stores;
 - (d) the treatment of surplus stores.

24.—(1) Goods subject to customs procedures or liable to duty shall not be unloaded from any means of transport at a place not approved by the Fiscal Officer.

Unloading at approved place.

(2) Any goods which are unloaded in breach of subsection (1) are liable to forfeiture.

PART 5 OFFICERS' POWERS

25.—(1) The person in charge of a customs port or a customs airport shall allow officers access to it in order to inspect the premises and any goods which are there.

Access to customs ports and airports and the keeping of records.

(2) The person in charge of a customs port or customs airport shall—

- (a) keep a record, in such form and manner as the Fiscal Officer may approve, of all ships and aircraft arriving at or departing from the customs port or customs airport;
- (b) retain for such period as the Fiscal Officer may approve and produce at the request of the Fiscal Officer—
 - (i) a list of ships and aircraft arriving at or departing from the customs port or customs airport;
 - (ii) all other documents which relate to the movement of ships or aircraft; and
- (c) allow the Fiscal Officer to take up and make copies of any such record, list or document.

26. An officer shall at all times have access to any approved wharf, examination station or customs station in order to inspect it and examine any goods which are there.

Access to approved wharves etc.

27.—(1) At any time while a ship is within the limits of a customs port or within territorial waters or an aircraft is at a customs airport, an officer may board the ship or aircraft in order to inspect it and examine any goods which it carries.

Powers in relation to ships, aircraft and vehicles.

(2) The master of a ship or the commander of an aircraft must allow officers at any time to board the ship or aircraft in order to inspect it and any goods in it and any documents relating to the ship or aircraft or goods or persons carried in it.

(3) The Fiscal Officer may station officers and authorised persons in any ship while it is within the limits of a customs port.

(4) In the circumstances of subsection (3) the master of the ship shall provide reasonable accommodation for the officers and authorised persons and ensure safe means of access for such persons to and from the ship.

(5) Without prejudice to subsections (1), (2) and (3) an officer shall have access to every part of any ship, aircraft and vehicle at a customs port, customs airport and crossing point and may—

- (a) mark any goods;
- (b) lock up, seal or otherwise secure any goods or container in which goods are found; and
- (c) for the purposes of this section use such force as is reasonably necessary to break open any door, window or container and remove any impediment or obstruction whatsoever.

Power to prohibit persons.

28. The Fiscal Officer may prohibit any person from boarding a ship in a customs port who appears to him to have no business on the ship.

Power to detain ship or aircraft before clearance.

29. The Fiscal Officer may detain a ship or aircraft which appears to him to be likely to depart for a destination outside the Areas or the territory of the Republic before customs clearance has been given.

Withdrawal of clearance.

30.—(1) Where it appears necessary to do so the Fiscal Officer may at any time while a ship is within the limits of a customs port or an aircraft is at a customs airport withdraw clearance previously given.

(2) Withdrawal of clearance is effective only when communicated either orally or in writing to the master of a ship or commander of an aircraft and if in writing may be served by—

- (a) delivering it to him personally;
- (b) leaving it at his last known address; or
- (c) leaving it on board the ship or aircraft with the person appearing to be in charge or command of it.

Direction to unload.

31. Where the cargo manifest has not been lodged in accordance with section 17 or unloading of goods is delayed, the Fiscal Officer may direct, at the risk and expense of the carrier, that the goods be unloaded from the ship, aircraft or other means of transport at a place approved by him.

PART 6 SUPERVISION AND STORAGE OF GOODS

Approval of temporary storage facilities.

32.—(1) The Fiscal Officer may approve at any customs port, customs airport or other place temporary storage facilities for the storage of goods until they are placed under a customs-approved treatment or use.

(2) Such approval may be made on such conditions and subject to such requirements as the Fiscal Officer sees fit to impose including as to procedures, records, storage, security and guarantees.

(3) The Fiscal Officer may at any time revoke or vary an approval given under subsection (1).

(4) The Fiscal Officer may supervise and control any place designated as a temporary storage facility.

(5) The operation of a temporary storage facility shall be subject to such conditions as the Fiscal Officer may impose.

(6) The Administrator may by order prescribe the fees to be charged for services supplied at storage facilities and different provision may be made for different cases.

33.—(1) Goods imported into the Areas may only be placed in temporary storage facilities if permitted by the Fiscal Officer.

Storage in temporary storage facilities.

(2) In the circumstances of subsection (4) a statement signed by or on behalf of the carrier and presented for signature to an officer shall be prepared.

(3) The statement referred to in subsection (2) shall—

- (a) be in a form permitted by the Fiscal Officer;
- (b) (if applicable) include details of the description, the weight, quantity, content and condition of the goods and their packaging and the measures being undertaken.

(4) The circumstances referred to in subsection (2), not arising on account of natural losses or deterioration, are that in relation to goods coming into the Areas there are—

- (a) missing goods or other deficiencies;
- (b) signs of interference with parcels, vessels, cartons or other packaging;
- (c) signs of pilferage or leakage.

(5) If the Fiscal Officer confirms that the circumstances of subsection (4) apply he may charge the duty on any goods which are missing.

34.—(1) The Fiscal Officer may permit the temporary storage of imported goods or goods moving under the transit procedure in temporary storage facilities approved under section 32(1).

Controls over goods in temporary storage facilities.

(2) Goods unloaded into temporary storage facilities on the basis of the cargo manifest are subject to customs supervision and controls.

(3) Goods in temporary storage facilities may—

- (a) only be moved with the consent of the Fiscal Officer;
- (b) be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics;
- (c) be examined and have samples taken by the Fiscal Officer, in order that they may be assigned a customs-approved treatment or use.

(4) In accordance with subsection (2) an officer may enter any temporary storage facilities to carry out inspections and investigations and examine goods and documents.

(5) An officer may for control purposes seal or lock any temporary storage facility or part of it or in any other manner secure the goods in it and such seal, lock or other security may remain in place until the exercise of controls is completed, any duty due is paid and satisfactory explanations for any deficiencies are given.

(6) The operator of a private temporary storage facility (“the operator”) is liable for any duty due on the goods and the Administration is not liable for any damage, deterioration or destruction of goods stored.

(7) Goods placed under a customs warehousing procedure or for

exportation must not be placed in temporary storage facilities.

(8) The operator must within 12 hours of a delivery of goods notify the Fiscal Officer in writing of any discrepancy between the goods listed on the cargo manifest and those delivered.

(9) Without prejudice to any liability for any offence, the operator must pay the duty due on goods in relation to any deficiencies where the discrepancy had not been notified under subsection (8).

(10) The operator is liable to pay the duty and tax in respect of any deficiencies assessed by the Fiscal Officer in relation to goods stored in temporary storage facilities.

Time limits for storage.

35.—(1) The storage of goods in temporary storage facilities is subject to the following time limits—

- (a) for goods carried by sea, 45 days from the date on which the cargo manifest is lodged;
- (b) for goods carried by air, 20 days from the date on which the cargo manifest is lodged.

(2) The Fiscal Officer may extend or reduce the time limits for the storage of goods in a particular case.

(3) Goods presented to customs and stored in temporary storage facilities must, within the time limits in subsection (1), be assigned a customs-approved treatment or use which may include—

- (a) placing under a customs procedure;
- (b) entry into a free zone or a free warehouse;
- (c) exportation from the customs territory;
- (d) destruction with the consent of the Fiscal Officer and on terms and conditions laid down by him;
- (e) abandonment to the Administration with the Fiscal Officer's consent in accordance with section 54.

(4) Where a customs-approved treatment or use has not been assigned to goods within the above time limits the provisions relating to uncleared goods apply.

PART 7 DUTIES, TAXES AND OTHER CHARGES

Charging of duties, taxes and other charges.

36.—(1) The assessment, levying, payment and collection of customs duties in respect of goods for the armed forces of the United Kingdom, the United Kingdom authorities, authorised service organisations, contractors, sutlers, members of a force or civilian component and their dependants, governed by the provisions of the Treaty of Establishment shall be subject to that Treaty applied in accordance with the Protocol.

(2) Any goods, equipment, materials and accessories that are imported in accordance with subsection (1), without the payment of customs duty, by the forces of the United Kingdom, by authorised service organisations or by the United Kingdom authorities and which are subsequently disposed of by them, are not chargeable with customs duty if the goods had originated from a member State, and in any other case, except for motor vehicles within subsection (3),

are chargeable with customs duty at a rate of 5% of their dutiable value which shall be taken to be their sale price.

(3) Motor vehicles, which are disposed of otherwise than by being dismantled or re-exported, are chargeable by reference to their dutiable value, which shall be taken to be the price at which they are sold, and at the rate in force at the time of their disposal.

(4) The charges to customs duty arising under subsections (2) and (3) are without prejudice to any liability for excise duty, tax or other charges.

(5) Any word or expression used in this section which is defined or used in the Treaty of Establishment shall have the same meaning for the purposes of this section as it has for the purposes of that Treaty.

37.—(1) If by virtue of any provision or under any practice (including a practice arising from the Treaty of Establishment) by which goods not in free circulation and chargeable with a duty of customs or tax—

Goods delivered without payment of duty.

(a) are allowed to be delivered in the Areas without payment of that duty or tax (whether or not the duty or tax was chargeable in the Republic or the Areas) on condition that they—

- (i) shall be subject to a restriction on their use or sale;
- (ii) shall be re-exported;
- (iii) shall be subjected to a procedure whether or not any such procedure should take place in the Republic or the Areas; or
- (iv) shall be subject to any other appropriate condition; and

(b) the amount of customs duty or tax due on the goods depended on their being imported on such a condition; and

(c) the condition is breached,

then, unless the Fiscal Officer had permitted the breach or varied the condition, any duty chargeable on the goods shall fall to be paid as if the goods had been imported into the Areas at the time of the breach.

(2) Subsection (1) shall apply whether the goods were imported into the Republic or directly into the Areas and “condition” means a condition imposed by an official of the Republic or the Fiscal Officer.

(3) Subsection (1) shall apply whether or not any undertaking or security has been given against breach of the condition or payment of the duty or tax and the forfeiture of any goods under this section shall not affect the liability of any person who has given such security or undertaking.

(4) In the case of a breach of a condition referred to in subsection (1) the goods in relation to which the condition was imposed shall be liable to forfeiture.

PART 8 CUSTOMS DEBT

Customs debt.

38. “Customs debt” means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation), which apply to specific goods under the Community provisions in force.

Communication of customs debt.

39. A customs debt which arises out of an act which was liable to give rise to criminal liability may be communicated to the debtor after the period of 3 years provided for in the Code but not after 12 years from the date on which the customs debt was incurred.

Persons supplying information liable for customs debt.

40. Where a customs declaration for one of the following procedures—

- (a) the release for free circulation of goods liable to import duties; or
- (b) the placing of such goods under temporary importation procedure with partial relief from import duties,

is drawn up on the basis of information which leads to the whole or part of the amount legally owed not being collected, a person (other than the declarant) who provided any information which he knew, or ought reasonably to have known, was false shall be jointly and severally liable for the customs debt along with the declarant.

Regulations.

41. The Administrator may by regulations make further provision about the time limits, the manner of payment and suspension of a customs debt and the guarantees required under the Code.

PART 9 OTHER CUSTOMS DEBT

Other customs debt.

42. “Other customs debt” means the obligation of a person to pay any duty, tax or any other amounts chargeable on the importation of goods other than ‘customs debt’ as defined in section 38.

Incurrence of other customs debt.

43. Other customs debt is incurred—

- (a) at the time of acceptance of a customs declaration;
- (b) upon the unlawful introduction into the customs territory of goods;
- (c) upon the unlawful removal of goods chargeable with customs duty, excise duty, tax or other charges from customs supervision;
- (d) upon the non-fulfilment of an obligation or non-compliance with a condition imposed or arising from the placing of goods under a customs procedure or customs-approved treatment or use.

PART 10 PROVISIONS IN RELATION TO CUSTOMS DEBT AND OTHER CUSTOMS DEBT

Guarantees.

44. In order to secure a customs debt or other customs debt the Fiscal Officer may require the declarant to provide a guarantee.

45. When an amount has been assessed and notified to a person as other customs debt the amount of the assessment is due from that person and may be recovered accordingly, unless the assessment is withdrawn or the amount communicated is reduced.

Notification of assessment of other customs debt.

46. A notification of customs debt or other customs debt to a personal representative, administrator, receiver, liquidator or any other person who acts in any other similar capacity shall be treated as delivered to the person in relation to whom that person acts.

Notification to personal representatives etc.

47.—(1) If any person had, before or after the enactment of this Ordinance, paid an amount as other customs debt which was not legally due then upon the application of that person the Fiscal Officer shall repay that amount.

Recovery of amounts not legally due.

(2) The Fiscal Officer may refuse an application under subsection (1), if the repayment of that amount would result in an unjustifiable enrichment of the person who has made the application.

(3) No application may be made under subsection (1) after a period of 3 years from the date the amount was paid.

(4) An application under subsection (1) shall be made in such form and manner and shall be supported by such documentary evidence as the Fiscal Officer may require.

48.—(1) A financial penalty of 10% of the amount assessed may be imposed by the Fiscal Officer upon a declarant in respect of any customs duty that is assessed where the amount payable was not established at an earlier time because of a default.

Financial penalty.

(2) A “default” referred to in subsection (1) includes a failure to make a proper declaration or to produce proper documents.

49.—(1) A person who is liable to pay a financial penalty under section 48(1) is also liable to pay interest at the rate of 9% per annum on the amount payable from the date it became due until it has been paid.

Interest.

(2) The “amount payable” under subsection (1) shall include the financial penalty and the customs duty due.

PART 11 CUSTOMS PROCEDURES

50.—(1) The owner of the goods or his representative shall, after the presentation of goods to customs, submit a customs declaration within the time limits referred to in section 35(1), in order for the goods to be assigned to a customs procedure or to a customs-approved treatment or use.

Customs declaration.

(2) The Fiscal Officer may designate particular customs stations for the clearance of particular goods.

51. The Administrator may by regulations specify the conditions for the use of simplified procedures and for circumstances where a customs declaration is not required.

Regulations for simplified procedures.

52. The Administrator may by regulations provide for—

(a) the operation of any customs arrangements;

Regulations for customs procedures.

(b) additional procedures relating to the application of conditions for placing goods under a customs procedure

or a customs-approved treatment or use;

- (c) additional procedures and requirements in relation to the customs declaration, the examination and sampling of goods, or the format of receipts and other documents;
- (d) the conditions for the operation of customs warehouses; and
- (e) licences, licence fees and annual operation fees for customs warehouses.

Application of section 34 to warehousing.

53. To the extent that there is no contrary Community provision and subject to necessary modification the provisions of section 34(3), (4), (5), (6), (8) and (9) shall apply to warehousing arrangements.

Abandonment, destruction and sale of goods.

54.—(1) The Fiscal Officer prior to the release of goods, at the written request of the declarant and on payment in advance of all expenses and charges due in relation to the goods, may approve—

- (a) the abandonment of goods to the Administration;
- (b) the destruction of goods.

(2) The costs arising from the abandonment or destruction of goods shall be borne entirely by the declarant.

(3) The Fiscal Officer may direct the procedures to be followed for a destruction of goods.

(4) On the customs declaration, the nature and quantity of the waste and scrap resulting from a destruction shall be recorded.

(5) Waste and scrap resulting from a destruction may be released for free circulation if all duty and tax is paid.

(6) Subject to subsection (5), the abandonment to the Administration or the destruction of goods under the control of the Fiscal Officer shall relieve the declarant from the obligation to pay any duty and tax.

PART 12 PASSENGERS' BAGGAGE

Passengers' baggage.

55.—(1) Any person entering the Areas other than from the territory of a member State shall, at such place and time and in such manner as the Fiscal Officer may direct, present his baggage for examination and declare any thing contained in his baggage or carried with him which—

- (a) he has obtained outside the customs territory of the Community;

or

- (b) being dutiable or chargeable goods, he has obtained within the customs territory without payment of duty or tax or in respect of which duty or tax has been refunded, and in respect of which he is not entitled to exemption from or refund of duty or tax under any legal provision including any applying by virtue of the Treaty of Establishment.

(2) Where charges due in relation to any thing referred to in subsection (1) are not paid it shall be delivered to a customs office as soon as possible.

(3) Any thing stored which is not cleared within 45 days from the date of its delivery to the customs office in accordance with subsection (2) may upon examination by an officer or authorised person be considered as uncleared.

(4) The Fiscal Officer may, if there are good reasons to do so, extend the time limit in subsection (3) by up to 3 months.

(5) Passengers' baggage may be moved under any applicable transit procedure arrangements.

(6) A person who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine in an amount not exceeding £200 or to imprisonment for a term not exceeding 1 year or to both penalties.

56. Any person entering or leaving the Areas other than a person entering from or leaving to enter the territory of the Republic—

Questions of persons entering or leaving the Areas.

(a) shall answer such questions as an officer may put to him in respect of his baggage and any thing contained in it or carried with him;

(b) shall produce such evidence as the Fiscal Officer may require to support any answers given under paragraph (a).

PART 13 EXPLOSIVES AND POSTAL GOODS

57.—(1) A container or parcel which is imported containing inflammable or explosive material or other substance which poses a risk to health or to the environment must bear a discernible and legible inscription about its content and potential to cause harm.

Explosives etc.

(2) Every carrier, shipping agent or airline company must before it is unloaded, make a separate declaration to the Fiscal Officer concerning the importation of any container or parcel referred to in subsection (1).

58. The Administrator may by regulations provide for customs procedures in relation to goods or any other things which are imported or exported by post and in particular may make provision as to offences.

Regulations for postal goods.

PART 14 UNCLEARED GOODS

59.—(1) Where goods are carried—

Uncleared goods.

(a) by sea and are not released within 45 days from the date on which the cargo manifest was lodged; or

(b) by air and are not released within 20 days from the date on which the cargo manifest was lodged;

subject to any extension of time granted by the Fiscal Officer, the goods are treated as uncleared and, subject to subsection (5), must be transferred to the Administration's custody.

(2) The Fiscal Officer may sell goods in accordance with section 63 or approve their destruction under section 60 on a date 21 days after they are treated as uncleared under subsection (1).

(3) The transportation, destruction and other costs in relation to goods, scrap and waste which are dangerous must be borne by the importer and recovered as a debt due to the Administration.

(4) If the goods are perishable or their safe-keeping is difficult, the Fiscal Officer may reduce the time limits provided for by this section.

(5) At the importer's risk and expense, the Fiscal Officer may allow goods in the Administration's custody to be stored in a place approved by the Fiscal Officer.

Destruction of uncleared goods.

60.—(1) The Fiscal Officer may approve the destruction of uncleared goods which are—

- (a) of negligible value;
- (b) dangerous or not fit for use;
- (c) foodstuffs certified as unfit for human consumption by an officer of a competent authority.

(2) Goods may be destroyed immediately in the cases of subsection (1) (b) and (c) and after 21 days from the date that they were treated as uncleared in the case of subsection (1) (a).

(3) Goods shall be destroyed under this section in the presence of an officer and in accordance with procedures laid down by the Fiscal Officer.

(4) The importer of goods within subsection (1) is liable for the costs arising under subsections (2) and (3) which may be recovered as a debt due to the Administration.

Fees for warehousing.

61. The Administrator may by order set fees for warehousing of goods in the custody of the Administration and chargeable to the importer of the goods.

Costs for special handling.

62. The extra costs of warehousing combustible or inflammable goods or other goods which require special handling as directed by the Fiscal Officer may be charged to the importer of the goods.

Sales at auction.

63.—(1) Goods that are treated as uncleared and transferred to the Administration's custody may be sold by public auction on such terms and conditions and at such place as the Fiscal Officer may direct.

(2) If a buyer of goods sold at a public auction has not paid the relevant amount within 8 days from the date that the auction took place, the sale may be annulled by the Fiscal Officer and the goods may be sold again by auction under this section or otherwise dealt with in accordance with this Ordinance.

(3) The Fiscal Officer may agree to withdraw goods from public auction if, at any time before the commencement of the auction, the owner of the goods or his representative—

(a) applies to the Fiscal Officer in writing to that effect; and

(b) deposits a sum of money to cover any duty and tax and storage, removal, auction and any other charges arising.

(4) In the circumstances of subsection (3) the procedures relating to a customs-approved treatment or use shall be applied.

64.—(1) Any proceeds of a sale of goods taking place under section 63 shall be paid out in the following order— Proceeds of sale.

- (a) customs duty, excise duty and tax due on the goods;
- (b) charges arising from the sale including the expenses of any public auction;
- (c) freight and storage charges.

(2) Any amount remaining after the application of subsection (1) shall be paid to—

- (a) the person who immediately before the sale was the owner of the goods and who applies to be paid that amount to the Fiscal Officer within 6 months of the date the auction took place; and in default,
- (b) the Administration.

65. Where under this Ordinance uncleared goods are twice offered for sale by public auction but are not sold then the goods shall be treated as abandoned and become the property of the Administration. Unsold goods.

PART 15 CUSTOMS RELIEFS AND REPRESENTATION

66.—(1) The Administrator may by regulations provide for the refund of or partial or total relief from customs duty chargeable on any goods on their importation for certain persons, international or other organisations or bodies and subject to such conditions as may be specified. Customs reliefs.

(2) Such regulations may provide for the valuation of goods which have been entered for free circulation with relief which are subsequently assigned a different custom-approved treatment or use or customs procedure.

67.—(1) Any person may appoint a representative to act on his behalf in his dealings with the Fiscal Officer in relation to the requirements of customs and excise and associated legislation. Customs representation.

(2) Such an appointment shall be made in writing in such form and manner as the Fiscal Officer may direct.

(3) A representative submitting a customs declaration under customs legislation must be a customs agent approved under subsection (4).

(4) The Fiscal Officer may approve as a customs agent—

- (a) any person in accordance with Article 5 of the Code; or
- (b) a person exclusively employed in the service of the person whom he represents and duly authorised in writing by his employer.

(5) The Administrator may make regulations in relation to customs agents and in particular relating to—

- (a) registration, qualifications, powers, disciplinary control, duties and liabilities and the liabilities of any person on whose behalf a customs agent acts;

- (b) licensing procedures and the conditions which may be attached; and
- (c) the fees payable in respect of any licence, application or other document.

(6) The Fiscal Officer may in special circumstances exempt any person or category of persons from any requirement of regulations made under subsection (5).

PART 16 GENERAL POWERS

Power of entry to places subject to customs supervision.

68.—(1) An officer may at any reasonable time enter any place subject to customs supervision to examine the goods kept there and any other documents relating to the goods.

(2) A place subject to customs supervision includes—

- (a) a customs warehouse or temporary storage facility;
- (b) a place where are stored goods subject to customs supervision by virtue of article 37 of the Code; and
- (c) a place, other than a dwelling house, where are stored goods which are held for military or commercial purposes and chargeable with duty or tax which has not been paid.

Examination of imported goods and goods to be exported.

69. An officer may—

- (a) examine and take account of any goods which have been imported or are to be exported;
- (b) examine, remove and take copies of any documents which relate to any goods referred to in subsection (a);
- (c) require anyone whom he believes may hold information about such goods to supply him with such information.

Production of information and documents.

70.—(1) An officer may require any person whom he believes may hold information in relation to goods which—

- (a) have entered or left or are intended to enter or leave the Areas; or
- (b) have been in his possession and were delivered without payment of duty or tax, whether or not subject to any condition,

to produce such information at a place and within a period of time which the officer may reasonably specify.

(2) The power under subsection (1) may be exercised without prejudice to any lien, attachment or other legal right which may exist in relation to the information in question.

Entry and search.

71.—(1) Where an officer has reasonable grounds to suspect that in any premises, building or other place, other than a dwelling house, an offence under customs or associated legislation is being committed or has been or is about to be committed or that evidence of the commission of such an offence will be found, an officer may enter the premises and search it:

(2) Without prejudice to subsection (1) if a judge is satisfied by a statement by an officer made under oath that there are reasonable

grounds to suspect that in any premises, building, dwelling house or other place an offence under customs legislation is being, has been or is about to be committed or that evidence of an offence under customs legislation will be found, he may by warrant authorise that officer and any person accompanying the officer to enter and search.

72.—(1) Without prejudice to any other power under this Ordinance, where an officer has reasonable grounds to suspect that goods liable to forfeiture under customs legislation or documents or any other things which relate to the commission of an offence under customs legislation are kept or concealed in any premises, building or other place, an officer may—

Search for goods liable to forfeiture etc.

- (a) enter the premises, building or other place, other than a dwelling house, at any time; and
- (b) examine and search for goods, documents and any other thing.

(2) Without prejudice to subsection (1) if a judge is satisfied by a statement by an officer made under oath that there are reasonable grounds to suspect that in any premises, building, dwelling house or other place goods liable to forfeiture under customs legislation or documents or other things which relate to the commission of an offence under customs or associated legislation are kept or concealed, he may by warrant authorise that officer and any person accompanying the officer to enter and search.

73. An officer may stop and search any vehicle or other means of transport or ship which he has reasonable grounds to suspect is carrying—

Stop and search of vehicle and ships.

- (a) goods chargeable with any duty or tax which has not been paid or secured;
- (b) goods which are being unlawfully removed from one place to another;
- (c) any thing liable to forfeiture under this Ordinance; or
- (d) any thing which there are reasonable grounds to suspect is being, has been or is intended to be used for the commission of an offence under this Ordinance.

74.—(1) Where an officer has reasonable grounds to suspect that any person to whom this section applies by virtue of section 75 (referred to in this section as “the suspect”) is carrying any article—

Search of persons.

- (a) which is chargeable with any duty or tax which has not been paid or secured; or
- (b) with respect to the importation or exportation of which a prohibition or restriction is for the time being in force under or by virtue of any enactment,

the officer may exercise the powers conferred by subsection (2) below and, if the suspect is not under arrest, may detain him for so long as may be necessary for the exercise of those powers and (where applicable) the exercise of the rights conferred by subsection (3) below.

(2) The officer may require the suspect—

- (a) to permit such a search of any article which he has with him; and

(b) subject to subsection (3) below, to submit to such searches of his person, whether rub-down, strip or intimate, as the officer may consider necessary or expedient, but no such requirement may be imposed under paragraph (b) above without the officer informing the suspect of the effect of subsection (3).

(3) If the suspect is required to submit to a search of his person, he may require to be taken as soon as practicable—

- (a) except in the case of a rub-down search, before a judge or a superior of the officer concerned; and
- (b) in the excepted case, before such a superior;

and the judge or superior shall consider the grounds for suspicion and direct accordingly whether the suspect is to submit to the search.

(4) A rub-down or strip search shall not be carried out except by a person of the same sex as the suspect and an intimate search shall not be carried out except by a suitably qualified person.

Application and definitions of section 74.

75.—(1) Section 74 applies to the following persons, namely—

- (a) any person who is on board or has landed from any ship or aircraft;
- (b) any person entering or about to leave the Areas;
- (c) any person within the dock area of a port;
- (d) any person at a customs airport;
- (e) any person travelling from or to any place which is on or beyond the line;
- (f) any person entering or leaving a warehouse or other place where are stored goods subject to duty which has not been paid.

(2) In section 74—

“intimate search” means any search which involves a physical examination (that is, an examination which is more than simply a visual examination) of a person’s body orifices;

“rub-down search” means any search which is neither an intimate search nor a strip search;

“strip search” means any search which is not an intimate search but which involves the removal of an article of clothing which –

- (a) is being worn (wholly or partly) on the trunk; and
- (b) is being so worn either next to the skin or next to an article of underwear;

“suitably qualified person” means -

- (a) a medical practitioner entitled to practise medicine in the Areas by virtue of the Medical Practitioners Ordinance 1964;
- (b) a nurse employed by the Crown or an authorised service organisation; and
- (c) a person entitled to practise as a nurse in the Areas by virtue of section 3 of the Nursing and Midwifery Ordinance 1964.

Ordinance 10/1964.

Ordinance 20/1964.

- 76.** An officer or other person with power to examine documents—
- (a) may remove or take copies of any document;
 - (b) may retain for a reasonable period of time any document removed;
 - (c) on request, must issue a receipt for any document retained.

Removal and copying of documents.

77. An officer or other person having the power under this Ordinance to enter any building, premises or other place may use such force as is reasonably necessary for the purposes of that entry and for exercising any power he has of search, seizure, detention or removal and for those purposes he may break open any door, window or container and remove any other impediment or obstruction whatsoever.

Use of force.

78. An officer or other person who has the power to carry out any search under this Ordinance—

Powers in relation to search.

- (a) may detain or remove any goods, documents or other thing which may be used as evidence and detain or seize any thing which is liable to forfeiture; and
- (b) subject to the application of the procedures in section 74 (3) and (4) may search any person found on the premises whom he reasonably believes is in possession of any thing referred to in subsection (a);
- (c) may supply within a reasonable time after a request to that effect a copy of any document retained which is reasonably required to run a business effectively.

79. In the exercise of powers under this Ordinance an officer may use such scientific and technical equipment as he sees fit in order to examine goods and search for any thing.

Use of scientific equipment.

80. Subject to any direction of the Chief Officer as to amount, the Fiscal Officer may pay a reward in respect of any service rendered in relation to an assigned matter which appears to merit reward.

Rewards.

81. An officer may without warrant arrest any person who is committing or attempting to commit any offence under the customs or associated legislation which is punishable with imprisonment.

Arrest without warrant.

PART 17 RETURN OF PROPERTY AND COMPENSATION

82.—(1) For the purposes of this Part “property” means goods, documents and any other thing which is in the custody of the customs authorities of the Administration other than as a result of the exercise of a power to seize as liable to forfeiture.

Return of property.

(2) Unless there are lawful grounds for detention the Fiscal Officer must return property within 2 months of an application having been made by the owner for its return.

(3) An application under subsection (2) shall not be granted unless all duty, tax and other charges on importation or exportation which are due or would be due are paid and 3 months have elapsed since –

- (a) the property came into the custody of the customs authorities ;
- or

(b) the conclusion of any proceedings in connection with which the property is held as evidence or otherwise.

(4) Any application under subsection (2) must be made within 28 days of the time periods referred to in subsection (3) (as the case may be).

(5) The Fiscal Officer may dispose of any property as he sees fit if there is no application under subsection (2) which is being considered, has been granted and it is now possible to make.

(6) Any proceeds of sale arising as a result of a disposal under subsection (5) shall be paid to the Administration.

Compensation.

83.—(1) A person, whose property is or was in the custody of the customs authorities and which is lost, disposed of, damaged or destroyed, may apply to the Chief Officer for compensation for any loss or damage within 28 days of the expiry of the time periods referred to in section 82(3) or the return of the property (as the case may be).

(2) Compensation may only be awarded if—

(a) the exercise or purported exercise of a power by an officer was not attributable to any neglect or default, including a contravention of a provision of customs legislation, by the owner of the property;

(b) there has been a breach of the right conferred on the owner of the property in accordance with section 3 of the Protection of Property Ordinance 2004; and

(c) the award is necessary to afford just satisfaction to the owner for that breach.

Ordinance
36/ 2004.

Amount of
compensation.

84.—(1) In determining—

(a) whether an award is necessary in accordance with section 83(2); and

(b) if so, the amount of any award;

the Chief Officer shall take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950.

(2) Where the property in respect of which the loss or damage has been suffered is covered by any compensation scheme funded either by the Administration or by the Republic, any amount payable to the owner of the property under the scheme shall be deducted from the amount of compensation which is payable in respect of that property under this Ordinance.

PART 18 CRIMINAL OFFENCES

Falsely assuming
character of
Fiscal Officer,
obstruction and
other offences.

85.—(1) A person commits an offence if he falsely assumes the name, designation or character of the Fiscal Officer, an officer or an authorised person for the purpose of—

(a) obtaining admission to any place;

- (b) doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority; or
- (c) committing any other unlawful act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine in an amount not exceeding £5000 or to imprisonment for a term not exceeding 2 years or to both penalties.

(3) A person to whom a commission or other written authority has been issued by the Fiscal Officer who—

- (a) is required by the Fiscal Officer to deliver up or account for that commission or authority; and
- (b) fails to comply with such requirement within such period as may be specified by the Fiscal Officer,

is guilty of an offence and liable upon conviction to a fine in an amount not exceeding £100.

(4) A person convicted under subsection (3) commits a further offence if he continues to fail to comply with a requirement under subsection 3(a) and is liable to a fine in an amount not exceeding £10 for every day on which the failure continues.

(5) The Fiscal Officer, an officer or an authorised person who—

- (a) directly or indirectly asks for or takes in connection with his duties a payment or other reward, whether pecuniary or other, or any promise or security for a payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or
- (b) enters into or acquiesces in an agreement to do, abstain from doing, permit, conceal or connive at any act or thing relating to the application of customs or associated legislation so that the Administration is or may be defrauded or to evade a prohibition or restriction on importation or exportation,

is guilty of an offence and on conviction is liable to a fine in an amount not exceeding £5000 or to imprisonment for a term not exceeding 3 years or to both penalties.

(6) A person who—

- (a) directly or indirectly offers or gives to the Chief Officer or Fiscal Officer or an officer or authorised person a payment or reward, whether pecuniary or other, or any promise or security for any such payment or reward; or
- (b) proposes or enters into an agreement with the Chief Officer or Fiscal Officer or an officer or authorised person,

in order to induce him to do, abstain from doing, permit, conceal or connive at any act relating to his duties or powers under the customs or associated legislation in such a way that the Administration is or may be defrauded, or in order to evade a prohibition or restriction, or otherwise to take any course contrary to his duty, is guilty of an offence.

(7) A person who—

- (a) without the authorisation of an officer, breaks open any seal,

removes any mark or otherwise tampers with any goods which have been sealed, marked or secured in accordance with customs legislation;

- (b) impedes, does anything calculated to impede, obstructs, hinders, molests or assaults any person duly engaged in the performance of any duty imposed or the exercise of any power conferred on him by or under the customs or associated legislation, or any person acting in his aid;
- (c) does anything which impedes or is calculated to impede the carrying out of a search under this Ordinance or associated legislation;
- (d) does anything which impedes or is calculated to impede the Fiscal Officer, officer or authorised person in detaining, seizing or removing, records, books, documents, evidence of an offence or any thing liable to forfeiture;
- (e) rescues, damages or destroys any thing liable to forfeiture, records, books, documents or evidence of an offence or does anything calculated to prevent the procuring or giving of evidence;
- (f) prevents the arrest of any person by a person duly engaged in the performance of a duty or the exercise of any power in relation to an assigned matter, or rescues any person arrested in relation to an assigned matter;
- (g) by any means and for the information of another person, whether or not that other person is in the Areas, sends a signal or message connected with the evasion or intended evasion of duty chargeable on the importation or exportation of goods or the evasion of a prohibition or restriction on the importation or exportation of goods;
- (h) sells, offers for sale or otherwise makes available for sale goods as having been imported without payment of duty or otherwise unlawfully imported (whether or not the goods were so imported or chargeable with duty); or
- (i) attempts to do any of the acts referred to in subsections (a) (b), (c), (d), (e), (f) or (g),

commits an offence.

(8) A person who commits an offence under subsection (6) or (7) is liable on conviction to a fine in an amount not exceeding £5000 or to imprisonment for a term not exceeding 3 years or to both penalties and any goods in relation to which the offence is committed shall be liable to forfeiture.

(9) Except where otherwise required or permitted by law or by order of a court, the Fiscal Officer, officer or any other person who has received information in the course of his duties under this Ordinance or under customs or associated legislation, must not disclose any confidential information other than to an officer or employee of the Administration.

(10) A person who contravenes subsection (9) shall be guilty of an offence and on conviction is liable to a fine in an amount not exceeding £10,000 or to imprisonment for a term not exceeding 2 years or to both penalties.

86.—(1) Any reference in this section to “evasion of duty” includes a reference to the obtaining of a refund or drawback of duty.

Fraudulent evasion of duty and other offences.

(2) A person who in relation to any goods is in any way knowingly concerned in a fraudulent evasion or attempt at evasion—

- (a) of any duty chargeable on the goods;
- (b) of any prohibition or restriction on importation or exportation for the time being in force with respect to the goods,

commits an offence.

(3) A person who—

(a) knowingly acquires possession of—

- (i) any goods that have been unlawfully removed from a customs warehouse or customs supervision;
- (ii) any goods that are chargeable with duty which has not been paid;
- (iii) goods with respect to the importation or exportation of which there is a prohibition or restriction in force under any enactment; or

(b) is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods, such as are referred to in subparagraph (a); and

(c) (in either case) acts with intent to defraud or to evade any prohibition or restriction with respect to the goods, commits an offence.

(4) Subject to subsection (5) a person who commits an offence under this section is liable on conviction to a fine of any amount or to imprisonment for a term not exceeding 7 years or to both penalties.

(5) A person who commits an offence under this section in relation to controlled drugs is liable on conviction, if the offence was in relation to—

- (a) a Class A or Class B drug, to a fine of any amount or to imprisonment for life or to both;
- (b) a Class C drug to a fine of any amount or to imprisonment for a term not exceeding 8 years or to both.

87.—(1) A person who in relation to an assigned matter—

- (a) intending to defraud produces, delivers, sends or in any way uses a document which is untrue in a material particular; or
- (b) knowingly or recklessly makes a statement which is untrue in a material particular,

Untrue documents and declarations.

commits an offence and on conviction is liable to a fine in an amount not exceeding £50,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) In this section any reference to—

“intent to defraud” includes an intention that a device will respond to a document as if it were a true document; and

“produces”, “delivers” or “sends” includes any act as a result of which a document is produced, delivered or sent.

(3) Any goods in relation to which an offence is committed under subsection (1) shall be liable to forfeiture.

Offences of failure to comply.

88.—(1) A person who fails to comply with a provision of this Ordinance to which this section applies shall be liable on conviction to a fine in an amount not exceeding £2000 or to imprisonment for a term not exceeding 2 years or to both penalties.

(2) This section applies to sections 3(1) and (4), 14, 56 and 70(1).

Failure to comply with conditions or restrictions.

89.—(1) A person who fails to comply with a condition or restriction—

(a) in respect of goods which have been delivered in the circumstances of section 37, unless the Fiscal Officer had permitted the breach or varied the condition or restriction;

(b) imposed by the Fiscal Officer under an authorisation, designation, approval or licence granted under this Ordinance or associated legislation,

commits an offence and is liable on conviction to a fine in an amount not exceeding £2000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Where a person is convicted under subsection (1) (a) the goods in relation to which the offence was committed shall be liable to forfeiture.

(3) The Fiscal Officer may revoke any authorisation, designation, approval or licence granted under customs or associated legislation in a case where an offence under subsection (1) has been committed.

Offences of failing to keep books and records.

90. A person who—

(a) fails to keep the books and records required under this Ordinance,

(b) fails to keep the supporting documents to a customs declaration required by section 116,

commits an offence and is liable on conviction to a fine in an amount not exceeding £2000 or to imprisonment for a term not exceeding 2 years or to both penalties.

Contravention of prohibition or restriction.

91. A person who by any act or omission contravenes a prohibition or restriction on importation or exportation commits an offence and is liable on conviction to a fine in an amount not exceeding £2000 or to imprisonment for a term not exceeding 2 years or to both penalties.

Offences in relation to exportation of prohibited or restricted goods.

92.—(1) If any goods are—

(a) exported or shipped as stores; or

(b) brought to any place in the Areas for the purpose of being exported or shipped as stores,

and the exportation or shipment is or would be contrary to any

prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods shall be liable to forfeiture and the exporter or intending exporter of the goods and any agent of his concerned in the exportation or shipment or intended exportation or shipment shall each be guilty of an offence and liable on conviction to a fine of three times the value of the goods or £2000 whichever is greater.

(2) Any person knowingly concerned in the exportation or shipment as stores, or in the attempted exportation or shipment as stores, of any goods with intent to evade a prohibition or restriction commits an offence under this subsection.

(3) Subject to subsection (4) below, a person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding £5000 or to imprisonment for a term not exceeding 7 years or to both.

(4) A person who commits an offence under subsection (2) in relation to controlled drugs is liable on conviction, if the offence was in relation to—

- (a) Class A or Class B drugs, to a fine of any amount or to imprisonment for life or to both penalties;
- (b) Class C drugs, to a fine of any amount or to imprisonment for a term not exceeding 8 years or to both penalties.

(5) If by virtue of any restriction goods are only allowed to be exported when consigned to a particular place or person and any goods so consigned are delivered to some other place or person, the ship, aircraft or vehicle in which they are or are about to be exported shall be liable to forfeiture unless the owner of the ship, aircraft or vehicle—

- (a) took all reasonable steps to ensure that the goods were delivered to the place to which or person to whom they were consigned ; and
- (b) did not connive at or, except under duress, consent to the delivery of the goods to that other place or person.

93. A person, who would apart from this section commit both –

- (a) an offence under section 92(1) or (2) above; and
- (b) a corresponding offence under the enactment or instrument imposing the prohibition or restriction being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

No conviction of both an offence under the Ordinance and corresponding offence.

may not be convicted of both offences but if the corresponding offence provides for a higher penalty than could otherwise be imposed under section 92 then the court may impose that higher penalty on a conviction for either offence.

94.—(1) Where the Fiscal Officer has permitted the storing of goods which are liable to duty in—

- (a) temporary storage facilities;
- (b) a customs warehouse; or
- (c) any other place under customs supervision or otherwise,

Offence of removal from storage.

and without the consent of the Fiscal Officer goods are removed without the duty chargeable having been paid, any person who was knowingly concerned in the removal, concealment or loading of the goods commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to a fine in an amount not exceeding three times the value of the goods or £5000, whichever is the greater or to imprisonment for a term not exceeding 3 years or to both penalties.

(3) This section shall apply even though the liability to pay the duty chargeable arose in the Republic or the goods concerned were imported into the Republic before being brought to the Areas.

PART 19 DETENTION, SEIZURE AND FORFEITURE

95.—(1) Any thing liable to forfeiture under the customs legislation may be detained or seized as liable to forfeiture by—

- (a) the Fiscal Officer, an officer or an authorised person;
- (b) a police officer;
- (c) a member of Her Majesty's armed forces.

(2) Where any thing is detained or seized as liable to forfeiture under the customs legislation or otherwise seized under associated legislation by a person other than the Fiscal Officer or officer, that person shall, as soon as possible, subject to subsection (3), either—

- (a) deliver that thing to the nearest customs office; or
- (b) if such delivery is not practicable, give to the Fiscal Officer at the nearest customs office notice in writing of the seizure or detention with full particulars of the thing detained or seized.

(3) Where the person detaining or seizing any thing in relation to an assigned matter is a police officer and that thing is or may be required for use in connection with any proceedings to be brought under other legislation, it may be retained in the custody of the police authorities until either those proceedings are completed or it is decided that no such proceedings shall be brought.

(4) In relation to any thing retained by the police under subsection (3) the provisions of subsections (5), (6) and (7) shall apply.

(5) Notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, shall be given to the Fiscal Officer at the nearest customs office.

(6) An officer may examine the thing retained and take an account of it at any time while it remains in the custody of the police.

(7) Nothing in section 170 of the Criminal Procedure Ordinance shall apply in relation to any thing detained or seized under customs legislation.

(8) The procedures for the condemnation of goods liable to forfeiture are set out in Schedule 1.

Detention and seizure of goods as liable to forfeiture.

Cap.155 and Ordinances 4/60, 19/63, 1/66, 2/72, 2/73, 10/75, 4/78, 11/79, 22/87, 4/92, 8/96, 1/97, 27/99, 17/2003 43/2003 and 34/2004.
Schedule 1.

96.—(1) Without prejudice to any other power to detain or seize conferred by this Ordinance, goods or any other thing may be detained or seized as liable to forfeiture in circumstances where—

Goods liable to forfeiture.

- (a) in relation to any goods there has been a fraudulent evasion or attempt at evasion of payment of duty;
- (b) goods have been improperly imported;
- (c) goods have been, or steps have been taken with a view to goods being, improperly exported;
- (d) goods have been imported or exported or are about to be exported contrary to a prohibition or restriction imposed under the customs or associated legislation or there has been an attempt to do so;
- (e) goods chargeable with duty which has not been paid are removed, concealed, loaded or in any other way taken from an approved warehouse, or other premises, or place under customs supervision;
- (f) any thing is mixed, packed or found with or used to transport, carry, contain or conceal any goods liable to forfeiture;
- (g) any thing has been used for the purpose of the commission of an offence under customs legislation;
- (h) a term, condition or other requirement imposed by the Fiscal Officer under a licence, approval or in any other way under customs or associated legislation has been breached;
- (i) a document has been produced in relation to goods for the purpose of customs or associated legislation which is untrue in a material particular;
- (j) goods which are chargeable with duty are concealed in a passenger's baggage or are transported contrary to any prohibition or restriction;
- (k) goods upon which duty has not been paid are being or have been transported, warehoused, harboured, kept, concealed or sold or are so dealt with contrary to any prohibition or restriction.

(2) The fittings, furniture, tackle and other equipment of a ship, aircraft, vehicle or an animal, which is liable to forfeiture under this Ordinance or any other customs legislation, are liable to forfeiture and may be detained or seized.

97. The Fiscal Officer may detain goods where he believes that an export declaration in relation to those goods may be untrue in a material particular.

Detention where untrue export declaration.

98.—(1) A ship of 250 or more tons register shall not be liable to forfeiture by virtue of any provision of this Ordinance other than under section 101 unless the offence in connection with which the forfeiture is claimed—

Forfeiture of larger ships.

- (a) was substantially the object of the voyage of the ship; or
- (b) was committed while the ship was being pursued by a ship in the service of the Administration after failing to bring to when properly summoned to do so; or

(c) was committed with the knowledge or connivance of the commander of the ship.

(2) For the purposes of this section, a ship shall be regarded as having been properly summoned to bring to if—

- (a) the ship making the summons did so by means of an international signal code or other recognised means;
- (b) the ship making the summons was identifiable as operating on the official business of the Administration, for the customs authorities or the police or on behalf of the United Kingdom forces; and
- (c) at the time when the summons was made the ship was within the territorial waters of the Areas.

(3) The exemption from forfeiture of any ship under this section shall not affect the liability to forfeiture of any goods it carries.

Forfeiture of ship, aircraft or vehicle constructed to conceal goods.

99.—Where—

- (a) a ship is or has been within the limits of any customs port or within the territorial waters of the Areas;
- (b) an aircraft is or has been at any place, whether on land or on water, in the Areas;
- (c) a vehicle is or has been within the limits of any customs port or customs airport or at a crossing point; or
- (d) a container designed to be carried on a ship, aircraft or vehicle is or has been within the limits of any customs port or customs airport or at a crossing point,

and it is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods then the ship, aircraft, vehicle or container shall be liable to forfeiture.

Forfeiture of ship or aircraft unable to account for missing cargo etc. .

100.—(1) If any of the cargo of a ship is thrown overboard, staved or destroyed to prevent seizure—

- (a) while the ship is within the territorial waters of the Areas; or
- (b) where the ship, having been properly summoned to bring to by any ship in the service of the Areas, fails so to do and is pursued,

the ship shall be liable to forfeiture.

(2) A ship shall be regarded as having been properly summoned to bring to where the conditions of section 98 (2) are satisfied.

Forfeiture of ship or aircraft unable to account for missing cargo.

101. Where the whole or a substantial part of the cargo, of a ship which has been within the limits of a customs port or of an aircraft at a customs airport, goes missing then, unless the master of the ship or commander of the aircraft accounts for the cargo to the satisfaction of the Fiscal Officer, the ship or aircraft shall be liable to forfeiture.

PART 20 REVIEW AND APPEAL

Reviews of decisions.

102.—(1) This section applies to any decision of the Fiscal Officer or officer concerned with the application of customs legislation.

(2) A person—

- (a) whose liability to pay any customs duty is determined by, results from or is or will be affected by any decision to which this section applies,
- (b) in relation to whom, or on whose application, such a decision has been made, or
- (c) on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may in writing request the Chief Officer to review that decision in accordance with section 103.

(3) The Chief Officer is not required to review any decision unless the request for the review is given before the end of the period of 60 days beginning with the day on which the notice of the decision or of the assessment containing the decision was given to the person requiring the review.

(4) No request may be made under this section to review a decision relating to any power conferred by this Ordinance or other customs or associated legislation to compound proceedings or to detain or seize as liable to forfeiture or as to the liability to forfeiture of anything detained or seized.

(5) The Fiscal Officer must give written notice of a decision to which this section applies to a person who—

- (a) requests such a notification;
- (b) has not previously been given written notice of that decision; and
- (c) if given notice would be entitled to require a review of that decision under subsection (2).

(6) Within 21 days of the date of the notice of the Chief Officer's determination on a review under section 103 a person may request under subsection (2) a decision to be reviewed for a second or subsequent time on the grounds that the Chief Officer did not, on a previous review, have the opportunity to consider certain facts or representations.

103.—(1) The Chief Officer on a request under section 102 must review the decision and may—

- (a) confirm the decision;
- (b) cancel or vary the decision; or
- (c) make a new decision.

(2) Where the Chief Officer—

- (a) is required to review a decision; and
- (b) he does not, within the period of 30 days beginning on the day on which the review was requested give notice of his determination on the review,

it shall be assumed for the purposes of this Part that the decision is confirmed.

(3) This section shall also apply to any review undertaken by the Chief Officer after the expiration of the time limit set out in section 102 (3).

Power of Chief Officer on review.

Appeals.

104.—(1) An appeal shall lie to the court with respect to a decision by the Chief Officer on a review under section 103.

(2) An appeal under this section shall not be entertained unless the appellant is the person who requested the review.

(3) An appeal shall not be entertained if an amount is outstanding in respect of any liability of the appellant to pay any duty (including an amount of any such duty which would be so outstanding if the appeal had already been decided against the appellant) unless—

(a) the Fiscal Officer has, on the application of the appellant, issued a certificate stating either that—

(i) adequate security has been provided for the payment of that amount; or

(ii) on the grounds of the hardship that would otherwise be suffered by the appellant, the Fiscal Officer either does not require the giving of any security for the payment of that amount or has accepted such lesser security as he considers appropriate; or

(b) the court decides that the Fiscal Officer should not have refused to issue a certificate under paragraph (a) and is satisfied that any security that would have been reasonable for the Fiscal Officer to accept in the circumstances has been offered .

(4) On an appeal under this section the court may quash or vary any decision and may substitute its own decision.

Regulations for reviews and appeals.

105. The Administrator may by regulations—

(a) make further provision in relation to reviews and appeals;

(b) add to the decisions which a person may request the Chief Officer to review under section 102 (2).

PART 21 PROCEEDINGS AND OTHER MATTERS

Civil and criminal proceedings.

106. Prosecutions for offences under customs and associated legislation and proceedings for the recovery of duties, taxes or penalties or for the condemnation or forfeiture of ships or other means of conveyance or goods may be instituted by the Fiscal Officer and are subject to the direction of the Attorney General and Legal Adviser.

Power to compound.

107.—(1) Save in respect of the criminal offences under section 85 (5), (6) and (7) the Fiscal Officer may compound any proceedings for an offence under the customs legislation on such terms as he thinks proper and on payment of a sum of money not exceeding the maximum penalty provided for the offence.

(2) On payment of such sum no further proceedings for that offence shall be taken against the person concerned and if he is in custody for that offence he shall be released.

Valuation for the purpose of penalties.

108. Where a fine for an offence relating to an assigned matter under the customs or the other legislation is required to be fixed by reference to the value of any goods, that value shall be taken as the price which those goods might reasonably be expected to have

fetched, after payment of any duty chargeable, if they had been sold in the open market at or about the date of the commission of the offence for which the fine is imposed.

109.—(1) Where an offence by a body corporate relating to an assigned matter is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other officer of the body corporate or any other person purporting to act in any such capacity, then that person as well as the body corporate commits that offence and is liable to be proceeded against.

Liability of directors etc.

(2) In this section “director”, in relation to any body corporate established under public ownership being a body corporate whose affairs are managed by its members, means a member of that body corporate.

(3) A person who commits an offence under subsection (1) is liable jointly and severally with the body corporate for the purposes of any civil proceedings.

110. A notice, claim, decision, direction or other document which is required to be served on any person for the purposes of an assigned matter is duly served on the person concerned if it is –

Service of notices and other documents.

- (a) addressed to and delivered personally to him or to his representative;
- (b) addressed to him and left or sent to him at his usual or last known home address or business address, or in the case of a body corporate, at its registered or principal office.

111.—(1) In any proceeding relating to an assigned matter a certificate from the Fiscal Officer stating that—

Certificates from the Fiscal Officer.

- (a) a person was or was not at a certain date registered in a register maintained in relation to an assigned matter;
- (b) a declaration or other document, which is required under the customs or other legislation, has or has not been submitted at a particular date;
- (c) an amount of duty or tax which appears to be due on the basis of a declaration has not been paid;
- (d) an amount of duty or tax assessed by the Fiscal Officer has not been paid;
- (e) a financial penalty imposed in relation to an assigned matter has not been paid; or
- (f) interest imposed in relation to an assigned matter has not been paid,

is sufficient evidence of the fact it certifies unless the contrary is proved.

(2) A copy of a document delivered to the Fiscal Officer for the purposes of customs or associated legislation and certified by him as a true copy is admissible evidence in any civil or criminal proceedings to the extent that the document itself is admissible.

(3) A document purporting to be signed by the Fiscal Officer or a person authorised by him, shall, unless the contrary is proved, be regarded as having been properly signed and may be proved by the production of a copy of such document certified by the Fiscal Officer as a true copy.

(4) A certificate from the Fiscal Officer stating that a document has been submitted by a person using a code allocated for the submission of documents in electronic form is, unless the contrary is proved, sufficient evidence of the fact it certifies.

Customs Register.

112.—(1) The Fiscal Officer may keep a register (“Customs Register”) in any form to record the name and the address of persons involved in any capacity in the importation, exportation or dealing in goods subject to customs or other movement procedures.

(2) A person within subsection (1) must apply to be registered in the Customs Register (if kept) and must notify the Fiscal Officer in writing of any change in the details of the information recorded in the Customs Register within 30 days from the date of the change.

Regulations for
Customs Register,
books and
records.

113. The Administrator may by regulations make provision for—

- (a) procedures in relation to the Customs Register;
- (b) the form of the books and records to be maintained by those eligible to be registered in the Customs Register and those approved to carry out customs acts or apply customs procedures.

Retention and
proof of records.

114.—(1) A person required to keep books and records under section 113 must retain them for 7 years.

(2) Subsection (1) is satisfied, if with the approval of the Fiscal Officer and upon such conditions as he imposes, the information held in books and records over 2 years old is retained in a form other than in the original books and records.

(3) A copy of any document containing information retained in accordance with subsection (1) is admissible as evidence in any proceedings to the extent that the original records would have been admissible.

Proof of certain
matters.

115.—(1) An averment in any proceedings under the customs or associated legislation that—

- (a) those proceedings were instituted by the order of the Fiscal Officer;
- (b) a person is or was the Fiscal Officer, an officer, police Officer or authorised person;
- (c) a person is or was appointed or commissioned by the Fiscal Officer or with his concurrence or authorised by the Fiscal Officer to perform a duty or exercise a power;
- (d) the Fiscal Officer has or has not been satisfied as to any matter relating to an assigned matter;
- (e) any ship is a British ship; or
- (f) any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid the seizure of those goods,

until the contrary is proved, is sufficient evidence of that matter.

(2) Where in proceedings brought by or against the Fiscal Officer, the Attorney General and Legal Adviser, an officer or any other person in respect of an act purportedly done in pursuance of any power or duty conferred or imposed on him by or under the customs or associated legislation, a question arises as to—

- (a) the place from which any goods have been brought;
- (b) the duty, tax or other charges which have been paid or secured in respect of goods;
- (c) the description of or nature of any goods or other thing;
- (d) whether any goods have been lawfully imported or lawfully unloaded from any ship or aircraft;
- (e) whether any goods have been lawfully loaded into any ship or aircraft or lawfully exported or were lawfully water-borne;
- (f) whether any goods were lawfully brought to any place for the purpose of being loaded into any ship or aircraft or exported; or
- (g) whether any goods are or were subject to any prohibition of or restriction on their importation or exportation,

the burden of proof shall lie upon the other party to the proceedings.

(3) In any proceedings under this Ordinance—

- (a) a certificate from the Attorney General and Legal Adviser that a specified provision of an enactment of the Areas corresponds to a specified provision of an enactment of the Republic or that a specified official or authority of the Areas is the equivalent of a specified official or authority of the Republic shall be proof of the matter so certified;
- (b) a copy of any part of a Republican enactment—
 - (i) contained in any printed collection of enactments purporting to be printed and published by an authority of the Republic; or
 - (ii) contained in any issue of the Official Gazette of the Republic; or
 - (iii) purporting to be printed by the Government Printer of the Republic, by whatever name called,
 shall be incontrovertible evidence of the due and lawful making of such enactment;
- (c) a version of any part of a Republican enactment in the English language—
 - (i) purporting to be produced by an authority of the Republic; or
 - (ii) certified as being accurate by an officer of the Administration considered by the court to have been at the time of such certification a competent translator into the English language from the language in which the Republican enactment was published in the Republic; or
 - (iii) given or produced in the course of oral evidence of any person whom the court considers to be a competent translator for the purpose; or
 - (iv) stated orally in court or produced in writing by a Registrar or official court interpreter,

may be held by the court to be incontrovertible evidence that such version is the accurate English version of the Republican enactment or part of the Republican enactment in question;

(d) a copy of a relevant document—

- (i) the accuracy of which is certified in writing by a senior officer of the Government Department of the Republic responsible for the relevant Republican law under which the relevant document was made; or
- (ii) in an English translation, the accuracy of which is certified in writing by a translator of recognised competence,

may be held to be incontrovertible evidence of the contents of such document.

Documents produced to the Fiscal Officer.

116.—(1) A customs declaration or other document required by customs legislation may be produced to the Fiscal Officer—

- (a) in writing; or
- (b) in an electronic form as approved by the Fiscal Officer.

(2) Where a document is produced in electronic form, the Fiscal Officer may allow some or all of the supporting documents to be retained by the person who is required to produce them or by a duly authorised representative.

(3) A person who produces a document referred to in subsection (1) must retain the supporting documents for 7 years.

Further provision by regulations.

117. The Administrator may by regulations—

- (a) make further provision for the better application of this Ordinance and Community legislation in relation to customs matters;
- (b) make provision for offences and the imposition of penalties.

PART 22

SAVINGS, REPEALS AND COMMENCEMENT

Savings.

118.—(1) Any regulation, order, notice, direction, form or other instrument having effect immediately before the commencement of the customs legislation, which was issued in accordance with provisions repealed by this Ordinance relating to any assigned matter, shall, unless and until revoked or amended and so far as not inconsistent with the provisions of customs legislation, continue to have effect as if made, issued or given in accordance with customs legislation even if no corresponding provision is made in this Ordinance.

(2) Any appointment made, commission, authority or licence granted or approval given by the Administrator or Fiscal Officer in accordance with any provisions repealed by this Ordinance, shall continue to have effect as if made, granted or given under the corresponding provisions of this Ordinance or other customs legislation, as far as they are not inconsistent and unless revoked.

(3) Any document referring to any provision repealed by this

Ordinance shall, unless the contrary intention appears, be construed as a reference to any corresponding provision of customs legislation.

119. The enactments in Schedule 2 are hereby repealed to the extent specified.

Repeals
Schedule 2.

120.—(1) Subject to subsection (2) this Ordinance shall bind the Crown and come into force on the date of its publication in the Gazette.

Application to
the Crown and
commencement.

(2) Sections 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94 shall not bind the Crown.

(3) For the purposes of this section “the Crown” means Her Majesty in right of Her Administration in the Areas.

SCHEDULE 1

(Section 95)

PROVISIONS RELATING TO FORFEITURE
Notice of Seizure

1. The Fiscal Officer or authorised officer shall give notice in writing of the seizure of any thing as liable to forfeiture together with the grounds of seizure to any person who was or appeared to be at the time of the seizure the owner or one of the owners of the thing seized.

2. Notice need not be given under this paragraph if the seizure was made in the presence of –

- (a) the person whose offence or suspected offence occasioned the seizure; or
- (b) the owner or any of the owners, the holder or any person purporting to act as the owner of the thing seized or any servant or agent of an owner;
- (c) in the case of any thing seized in any ship or aircraft or in the case of any ship or aircraft seized, the master or commander.

3. Notice under paragraph 1 shall be given in writing and shall be deemed to have been duly served on the person concerned -

- (a) if it has been served in accordance with section 110; or
- (b) where he has no address within the Areas or his address is unknown, by publication of a notice of seizure in the Gazette.

Notice of Claim

4. Any person claiming that any thing seized as liable to forfeiture is not so liable shall within one month of the date of—

- (a) the seizure,
- (b) the notice of seizure; or,
- (c) the publication of the notice of seizure in the Gazette,

give notice of his claim in writing at any customs office.

5. A notice under paragraph 4 shall be signed and specify the name and address of the claimant and the grounds on which the claim is based.

6. Where a claimant lives or resides outside the Areas, the notice shall also specify the name and address of an advocate who is qualified to act and is authorised to accept service of process and to act on behalf of the claimant. Service of process upon an advocate so specified shall be deemed to be proper service upon the claimant.

Condemnation

7. If, on the expiration of the period under paragraph 4 for the

giving of notice of claim in respect of any thing, no such notice has been given or if a notice has been given but a requirement of paragraph 5 or 6 is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

8. Where notice of claim in respect of any thing is duly given in accordance with this Schedule, the Fiscal Officer shall take proceedings within a reasonable time for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture, the court shall condemn it as forfeited.

9. Where any thing is in accordance with either of paragraphs 7 or 8 condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up or sale of the goods by the Fiscal Officer under paragraph 14, the forfeiture shall have effect in the case of paragraph 7 as from the date when the period specified in paragraph 4 has expired and in the case of condemnation by the court under paragraph 8, as from the date of the issue of the court order.

Proceedings for Condemnation by Court

10. Proceedings for condemnation shall be civil proceedings and may be instituted in the court of the Areas.

11.—(1) A claimant or his advocate shall at least 24 hours before the date set for the hearing of the proceedings for condemnation, make a statement upon oath before the Registrar that the goods seized as liable to forfeiture were or were to the best of his knowledge and belief the property of the claimant at the time of the seizure.

(2) A claimant shall give such security for the costs of the proceedings as may be determined by the court.

(3) If any requirement of this paragraph is not complied with within the relevant period, the court shall give judgment for the Fiscal Officer.

12.—(1) On a request being made to the Fiscal Officer the claimant may make an inspection of any seized goods in relation to which condemnation proceedings are being taken.

(2) Where an appeal is made against the decision of the court in any condemnation proceedings in relation to any thing, that thing shall be left with the Fiscal Officer or at any customs office until the proceedings have been concluded.

Provisions as to Proof

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

Power to deal with seizure before condemnation etc.

14. Where any thing has been seized as liable to forfeiture, the Fiscal Officer may at any time if he sees fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited—

- (a) deliver it up to any claimant upon his paying such sum as the Fiscal Officer thinks fit being a sum not exceeding that which in his opinion represents the value of the thing and any duty and tax chargeable on it which has not been paid; or
- (b) if the thing seized is a living creature or is in the opinion of the Fiscal Officer of a perishable nature, sell or destroy it.

15.—(1) If, where any seized thing is delivered up, sold, destroyed or damaged, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, then on an application to the Chief Officer made within 28 days of the decision of the court the claimant shall receive –

- (a) an amount equal to any sum paid under paragraph 14(a);
- (b) where goods have been sold, an amount equal to the proceeds of sale; or
- (c) where the seized goods have been destroyed or damaged, compensation in accordance with the provisions of section 83(2) and section 84.

(2) Where the amount to be offered under sub-paragraph (1) includes any sum on account of any duty or tax chargeable on the thing which had not been paid before its seizure, the Administration may deduct so much of that amount as represents that duty or tax.

(3) If the claimant accepts any amount offered to him under sub-paragraph (1), he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the goods.

SCHEDULE 2
(Section 119)

Title and reference	Extent of repeal
Anti-dumping and Countervailing Duties Ordinance (Cap.126)	The whole Ordinance
Landing and Shipping Charges Ordinance (Cap.291)	The whole Ordinance
Shipping Dues Ordinance (Cap. 296)	The whole Ordinance
Customs (Wharfage Dues) Ordinance (Cap.317)	The whole Ordinance
Playing Cards Excise Ordinance (Cap.325)	The whole Ordinance
Customs and Excise Ordinance 1969 (12/1969)	The whole Ordinance except for sections 131 to 135
Customs and Excise (Amendment) Ordinance 1971 (9/1971)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1975 (2/1975)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1977 (4/1977)	The whole Ordinance
Customs and Excise (Amendment) (No.2) Ordinance 1977 (8/1977)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1987 (20/1987)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1989 (19/1989)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1991 (9/1991)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 1999 (19/1999)	The whole Ordinance
Customs and Excise (Amendment) Ordinance 2003 (19/2003)	The whole Ordinance
Customs and Excise Duties Ordinance 2003 (31/2003)	The whole Ordinance except for – sections 7 to 8, sections 11 to 14, which shall apply only in relation to excise duties, and Schedule 3
Customs and Excise Duties (Amendment) Ordinance 2004 (1/2004)	The whole Ordinance
Customs and Excise Duties (Amendment) (No.2) Ordinance 2004 (14/2004)	The whole Ordinance

23rd June 2005
(128/288)

J. E. Stainton,
Acting Chief Officer.
