

Chapter 101.  
***Customs Act 1951.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 101.

***Customs Act 1951.***

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**SCHEDULE 1**



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Customs Act 1951,***

Being an Act relating to the Customs.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

<sup>1</sup>(1)<sup>2</sup> In this Act, unless the contrary intention appears—

<sup>34</sup>“**airport**” means a place declared under Section 7(1)(d) to be, for the purposes of this Act, a place for the landing of aircraft;

<sup>1</sup> Section 1 amended by No. 41 of 1983, s1.

<sup>2</sup> Section 1 (definition of “aerodrome”) repealed by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(a); Section 1 (definition of “aerodrome owner”) repealed by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(b); Section 1 Subsection (1) amended by No. 27 of 2003, s. 1; Section 1 (definition of “Commissioner of Customs”) inserted by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(d); Section 1 Subsection (1) amended by No. 27 of 2003, s. 1; Section 1 (definition of “Commissioner of Internal Revenue”) inserted by *Customs (Amendment) Act 1986* (No. 44 of 1986), s1(a); Section 1 (definition of “Commissioner of Internal Revenue”) repealed by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(c); Section 1 (definition of “the Comptroller”) amended by *Customs (Amendment) Act 1986* (No. 44 of 1986), s1(b); Section 1 (definition of “the Comptroller”) repealed by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(d); Section 1 (definition of “the Customs”) repealed and replaced by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(e); Section 1 Subsection (1) amended by No. 17 of 2004, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 Subsection (1) amended by No. 17 of 2004, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 (definition of “smuggling”) repealed and replaced by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(e); Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>3</sup> Section 1 (definition of “aerodrome”) repealed by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(a); Section 1 (definition of “aerodrome owner”) repealed by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(b); Section 1 Subsection (1) amended by No. 27 of 2003, s. 1; Section 1 (definition of “Commissioner of Customs”) inserted by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(d); Section 1 Subsection (1) amended by No. 27 of 2003, s. 1; Section 1 (definition of “Commissioner of Internal Revenue”) inserted by *Customs (Amendment) Act 1986* (No. 44 of 1986), s1(a); Section 1 (definition of “Commissioner of Internal Revenue”) repealed by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(c); Section 1 (definition of “the Comptroller”) amended by *Customs (Amendment) Act 1986* (No. 44 of 1986), s1(b); Section 1 (definition of “the Comptroller”) repealed by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(d); Section 1 (definition of “the Customs”) repealed and replaced

- <sup>5</sup>“**airport owner**” includes the occupier of an airport;
- “**aircraft**” includes aeroplanes, seaplanes, airships, balloons, and any other means of aerial locomotion;
- <sup>6</sup>“**assessment of duty**” includes the determination of the amount of duty payable;
- <sup>7</sup>“**Assistant Commissioner of Customs**” means an Assistant Commissioner of Customs appointed by the Commissioner General;
- <sup>8</sup>“**authentication code**” means any identification or identifying code, password or any other authentication method or procedure which has been assigned to a registered user of the computer service referred to in Section 195 for the purpose of identifying and authenticating the access to and use of the computer service by the registered user;
- <sup>9</sup>“**authorised officer**” in relation to this Act, means an officer of Customs authorised in writing by the Commissioner of Customs to exercise the powers or perform the functions of an office under the Act;
- “**boarding station**” means a place declared under Section 7(1)(a) to be, for the purposes of this Act, a boarding station;
- “**by authority**” means by the authority of an officer performing duty in the matter in relation to which the expression is used;
- <sup>10</sup>“**cannabinoids**” means cannabinoids of all kinds, other than a cannabinoid of a kind that can be obtained from a plant that is not a cannabis plant;
- <sup>11</sup>“**cannabis**” means a cannabis plant, whether living or dead, and includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant or cannabis plants and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre;
- <sup>12</sup>“**cannabis fibre**” means goods that consist wholly or substantially of fibre obtained from a cannabis plant or cannabis plants but do not contain any other substance or thing obtained from a cannabis plant;

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by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(e); Section 1 Subsection (1) amended by No. 17 of 2004, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 Subsection (1) amended by No. 17 of 2004, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 Subsection (1) amended by No. 10 of 2005, s. 1; Section 1 (definition of “smuggling”) repealed and replaced by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(e); Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>4</sup> Section 1 (definition of “airport”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(a).

<sup>5</sup> Section 1 (definition of “airport owner”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(a).

<sup>6</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>7</sup> Section 1 (definition of “Assistant Commissioner of Customs”) inserted by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(a).

<sup>8</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>9</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>10</sup> Section 1 (definition of “cannabinoids”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(c).

<sup>11</sup> Section 1 (definition of “cannabis”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(c).

<sup>12</sup> Section 1 (definition of “cannabis fibre”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(c).

- <sup>13</sup>**“cannabis plant”** means a plant of the genus *Cannabis*;
- <sup>14</sup>**“cannabis resin”** means a substance that consists wholly or substantially of resin (whether crude, purified or in any other form) obtained from a cannabis plant or cannabis plants;
- “carriage”** includes vehicle and conveyance of any kind;
- <sup>15</sup>**“clearance”** means the completion of the Customs formalities necessary to allow the goods to enter home consumption or to be exported, as the case may be;
- “Collector”** includes—
- (a) the Commissioner General; and
  - (b) the Commissioner of Customs; and
  - (c) an Assistant Commissioner of Customs; and
  - (d) a principal officer of Customs performing duty at the time and place in relation to which the expression is used; and
  - (e) any officer performing duty in the matter in relation to which the expression is used;
- <sup>16</sup>**“the Collector”** means the principal officer at a port of entry;
- <sup>17</sup>**“commercial document”** in relation to goods, means a document or other record prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage or storage or the goods;
- <sup>18</sup>**“Commissioner General”** means the Commissioner General of Internal Revenue appointed under Section 6 of the *Income Tax Act 1959* and any reference in this Act to the Comptroller or the Commissioner shall be deemed to include the Commissioner General;
- <sup>19</sup>**“Commissioner of Customs”** means the Commissioner of Customs appointed under Section 3 and any reference in the Act to the Comptroller or the Commissioner shall be deemed to include the Commissioner of Customs;
- <sup>20</sup>**“container”** means a container within the meaning of the Customs Convention on Containers, 1972 signed in Geneva on 2 December 1972,

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<sup>13</sup> Section 1 (definition of “cannabis plant”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(c).

<sup>14</sup> Section 1 (definition of “cannabis resin”) inserted by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(c).

<sup>15</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>16</sup> Section 1 (definition of “Collector”) repealed and replaced by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s1(b).

<sup>17</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>18</sup> Section 1 Subsection (1) amended by No. 27 of 2003, s. 1.

<sup>19</sup> Section 1 Subsection (1) amended by No. 27 of 2003, s. 1.

<sup>20</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

as affected by any amendment of the Convention that has come into force, and includes –

- (a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and
- (b) any baggage; and
- (c) any other thing that is or could be used for the carriage of goods, whether or not designed for the purpose;

<sup>21</sup>**“conveyance”** means an aircraft, railway rolling stock, vehicle, vessel or container of any kind;

<sup>22</sup>**“counterfeit trademark goods”** includes –

- (a) any goods, including packaging, bearing without authorisation a trademark which is substantially identical or deceptively similar to a well-known mark, a geographical indication or a trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a mark, and which thereby infringes or is likely to infringe the rights of the owner of the mark in question; or
- (b) any trademark designed without authorisation to be applied to goods, whether presented separately or not, in the same circumstances as counterfeit trademark goods; or
- (c) any goods bearing marks which are substantially identical or deceptively similar to protected trademarks, which may be in violation of any law relating to trademarks when used on goods or services differing from those for which a trademark is registered, causing confusion as to source or origin;

<sup>23</sup>**“the Customs”** means the Division of Customs of the Internal Revenue Commission;

<sup>24</sup>**“customs formalities”** means all the operations which must be carried out by the persons concerned and the Customs in order to comply with the Customs law;

<sup>25</sup>**“the Customs Act”** means this Act and any instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act, relating to customs in force within any part of the country;

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<sup>21</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>22</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>23</sup> Section 1 Subsection (1) amended by No. 17 of 2004, s. 1.

<sup>24</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>25</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.



<sup>26</sup>“**Customs Controlled Area**” means –

- (a) a port, airport, wharf, boarding station or port of entry that is appointed, and the limits of which are fixed, under Section 7; or
- (b) any place within the fixed limits described in the conditions of a permission granted by a Collector under Section 25; or
- (c) a place described in a licence for warehousing goods that is granted under Sections 54, 54A and 54B; or
- (d) a place that is approved, in writing, by the Commissioner-General as a place for the examination of international mail; or
- (e) any place at which an officer has been stationed on board any vessel or aircraft that has arrived in Papua New Guinea from a place outside Papua New Guinea for the purpose of doing anything he is required or authorised to do in the administration or enforcement of this or any other Act of Parliament;

<sup>27</sup>“**Customs-related law**” means –

- (a) this Act; or
- (b) any other Act, or any regulations made under any other Act, that relate to the importation or exportation of goods, where the importation or exportation is subject to compliance with any condition or restriction or prohibition or is subject to any tax, duty, levy or charge (however described); or
- (c) any other Act, or any regulations made under any other Act, that relate to the control of people or conveyances, at the border or in or at a Customs Controlled Area where such control is subject to compliance with any condition or restriction or prohibition (however described); or
- (d) the *Excise Act 1956* and regulations made under that Act;
- (e) any other Act, or regulation made under any other Act, that fails within the administration of the Commissioner-General of the Internal Revenue Commission;

“**court**” means a court of summary jurisdiction;

<sup>28</sup>“**database report**” means any automatic log, journal or other report which is automatically generated by the computer service referred to in Section 195 for the purposes of recording the details of a transaction relating to an electronic notice including the authentication code, data and time of receipt, storage location and any alteration or deletion relating to the notice;

<sup>26</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>27</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>28</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>29</sup>**“declarant”** means any person who makes a Goods declaration or in whose name such a declaration is made;

<sup>30</sup>**“documents”** includes –

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any paper or other material on which a photographic image or any other image is recorded; and
- (d) any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or of some other device;

**“drawback”** includes bounty or allowance;

<sup>31</sup>**“due date”** means the date when payment of duty is due;

**“dutiable goods”** means goods in respect of which a duty of customs is payable;

<sup>32</sup>**“duty”** means all revenue collected by the customs and includes –

- (a) duties of customs imposed under the *Customs Tariff Act 1990*; and
- (b) duties of excise imposed under the Excise Tariff Act 1992; and
- (c) goods and services tax imposed under Section 6 of the *Goods and Services Tax Act 2003*,

on goods at the point of import or export and also includes all administrative penalties or interest imposed by the customs for a breach of the Act or Regulations, and “duty of customs” or “customs duty” have a similar meaning;

<sup>33</sup>**“examination of goods”** means the physical inspection of goods by the Customs to satisfy themselves that the nature, origin, condition, quantity and value of the goods are in accordance with the particulars furnished in the goods declaration;

<sup>34</sup>**“goods”** include–

- (a) ships and aircraft; and
- (b) all kinds of movable personal property;

<sup>29</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>30</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>31</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>32</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>33</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>34</sup> Section 1 (definition of “goods”) repealed and replaced by *Customs (Amendment) Act 1998* (No. 5 of 1998), s1(d).

<sup>35</sup>**“goods declaration”** means a statement made by a person to the Customs, in the requirement form, and giving such particulars of the goods as are required to be given to the Customs in accordance with Customs-related law;

**“goods under drawback”** means goods in respect of which a claim for drawback has been made;

**“Government warehouse”** means a Government warehouse appointed under Section 71(1);

**“licensed warehouse”** means a warehouse licensed under Section 54;

**“master”**, in relation to a ship, means the person in charge of the ship, but does not include a pilot or a Government officer;

**“narcotic drug”** means any goods consisting of, or of a mixture containing, bufotenine, dimethyltryptamine, lysergide, mescaline, psilocin or psilocybin, or any goods declared under Section 2 to be narcotic drugs for the purposes of this Act;

**“National Economic and Fiscal Commission”** means the National Economic and Fiscal Commission established by Section 117 of the *Organic Law on Provincial Governments and Local-level Governments*;

**“officer”** includes all persons employed in the service of the Customs, and any officer of the Public Service appointed under Section 4 to be an officer for the purpose of this Act;

<sup>36</sup>**“owner”**, in relation to goods, includes any person (other than an officer of Customs acting in an official capacity) being or holding himself out to be the owner, importer, exporter, consignee, agent or person possessed of, beneficially interested in, or having any control of, or a power of disposition over, the goods;

**“owner”**, in relation to a ship or aircraft, includes a person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft;

<sup>37</sup>**“owner of copyright”** is as defined in the *Copyright and Neighbouring Rights Act 2000*;

**“package”** includes any means by which goods are cased, covered, enclosed, contained or packed for carriage;

<sup>38</sup>**“person”** means both natural and legal persons unless the context otherwise requires;

**“pilot”** means the person in charge or command of an aircraft;

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<sup>35</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>36</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>37</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>38</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>39</sup>**“pirated copyright goods”** includes –

- (a) any goods which are copies made without the consent of the right holder or a person duly authorised by the right holder and where the making of that copy would have constituted an infringement of a copyright or a related right; and
- (b) any implements used or intended to be used in the production of pirated goods;

**“port”** means a place declared under Section 7(1)(b) to be, for the purposes of this Act, a port;

<sup>40</sup>**“port of entry”** means a place declared under Section 7(1)(e) to be, for the purposes of this Act, a port of entry;

<sup>41</sup>**“registered user”** means a person who has been registered with and authorised by the Commissioner General to gain access to and use the computer service referred to in Section 195;

<sup>42</sup>**“release of goods”** means the action by the Customs to permit goods undergoing clearance to be released from Customs control and placed at the disposal of the persons concerned;

<sup>43</sup>**“right holder”** means –

- (a) the registered proprietor of a registered trade mark, a geographical indication or a well-known mark; or
- (b) the owner of copyright or other intellectual property right, and includes a duly authorised licensee as well as an individual, a corporation or an association authorised by any of the aforementioned persons to protect its rights;

**“the regulations”** means any regulations made under this Act;

<sup>44</sup>**“a security”** means security –

- (a) that ensures to the satisfaction of the Commissioner-General that an obligation to the Customs will be fulfilled; and
- (b) is described as “general” when it ensures that the obligations arising from several operations will be fulfilled;

**“ship”** includes any vessel used in navigation by water not propelled by oars only;

<sup>45</sup>**“smuggling”** means any unlawful importation, introduction or exportation or attempted unlawful importation, introduction or exportation of goods

<sup>39</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>40</sup> Section 1 (definition of “port of entry”) inserted by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s2(a).

<sup>41</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>42</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>43</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>44</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

subject to duties or any goods the importation or export of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament;

<sup>46</sup>**“third party”** means any person who deals directly with the Customs, for and on behalf of another person, relating to the importation, exportation, movement or storage of goods;

**“this Act”** includes the regulations;

**“time of exportation”** shall be deemed to occur–

- (a) where goods for exportation are transported by sea or air–at the time the ship or aircraft departs from the limits of the last port or airport from which it has received a Certificate of Clearance under Section 47; or
- (b) where the goods for exportation are transported by land–at the time when the goods are cleared for exportation by an officer at the last customs station before crossing the border of Papua New Guinea;

**“time of importation”** shall be deemed to occur–

- (a) where the goods for importation are transported by sea–at the time when the ship carrying the goods enters the limits of the first Papua New Guinea port of its voyage; or
- (b) where the goods for importation are transported by air–at the time when the aircraft carrying the goods first lands in Papua New Guinea or the time the goods are unloaded in Papua New Guinea, whichever first occurs; or
- (c) where the goods for importation are transported by land–the time the goods first cross the border into Papua New Guinea;

**“warehouse”** means a warehouse licensed under Section 54;

**“wharf”** means a wharf declared under Section 7(1)(c) for the purposes of this Act;

**“wharf owner”** includes the owner or occupier of a wharf.

(2) Where in this Act there is a requirement, or provision for a requirement, that a person answer questions, the person is required to answer, to the best of his knowledge and belief, all questions on the subject concerned that are asked by the Collector.

(3) Where in this Act there is a requirement, or provision for a requirement, that a person produce documents, the person is required to produce to the Collector, to the best of his power, all documents relating to the subject concerned.

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<sup>45</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

<sup>46</sup> Section 1 Subsection (1) amended by No. 10 of 2005, s. 1.

1A<sup>47</sup>. [*REPEALED.*]

**2. DECLARATION OF NARCOTIC DRUGS.**

The Minister may, by notice in the National Gazette, declare any goods to be narcotic drugs for the purposes of this Act.

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<sup>47</sup> Section 1A added by No. 26 of 1984. s1; repealed by No 41 of 2000.

**PART II. – ADMINISTRATION OF THE CUSTOMS.**

**3. ADMINISTRATION OF THIS ACT.**

<sup>48</sup>(1) The Commissioner General has the general administration of this Act.

(2)<sup>49</sup> <sup>50</sup>There shall be a Commissioner of Customs who shall—

- (a) be appointed by notice in the National Gazette by the National Executive Council after considering a recommendation from the Commissioner General; and
- (b) be appointed for such period, of not less than five years or more than seven years, as the National Executive Council determines; and
- (c) be eligible for re-appointment.

(3)<sup>51</sup> <sup>52</sup>The office of Commissioner of Customs is hereby declared to be an office to and in relation to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

**3A. DELEGATION BY COMMISSIONER GENERAL AND COLLECTORS.**

<sup>53</sup>(1) The Commissioner General may, by written instrument, delegate to the Commissioner of Customs or to an Assistant Commissioner or to Assistant Commissioners all or any of his functions and powers under this Act or any other Act that is an Act relating to customs or excise (except this power of delegation).

(2) A Collector may, with the written approval of the Commissioner General, delegate to any person all or any of his functions and powers under this Act (except this power of delegation).

**4. APPOINTMENT OF OFFICERS OF CUSTOMS.**

The Minister may, by notice in the National Gazette, appoint officers of the Public Service to be officers for the purposes of this Act.

**5. CUSTOMS SEAL.**

(1) The seal of the Customs is the National Emblem with the words “Papua New Guinea Customs” encircling the Emblem, and with the name of the port added.

(2) Judicial notice shall be taken of the seal.

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<sup>48</sup> Section 3 replaced by No. 41 of 1983, s2. Repealed and replaced by Customs (Budget Provisions) Act 1992 (No. 32 of 1992), s2.

<sup>49</sup> Section 3(2) repealed and replaced by *Customs (Amendment) Act* 1986 (No. 44 of 1986), s2. Subsection (2) repealed and replaced by No 41 of 2000.

<sup>50</sup> Section 3(2) repealed and replaced by *Customs (Amendment) Act* 1986 (No. 44 of 1986), s2. Subsection (2) repealed and replaced by No 41 of 2000.

<sup>51</sup> Section 3(3) added by No 41 of 2000.

<sup>52</sup> Section 3(3) added by No 41 of 2000.

<sup>53</sup> Section 3A added by No. 41 of 1983, s3; repealed and replaced by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s3.

**6. CUSTOMS FLAG, ETC.**

The vessels, boats and aircraft employed in the service of the Customs shall be distinguished from other vessels, boats and aircraft by such flag or in such other manner as is prescribed.

**7. DECLARATION OF PORTS, BOARDING STATIONS, ETC.**

(1) The Minister may, by notice in the National Gazette—

- (a) declare places to be, for the purposes of this Act, boarding stations for the boarding of ships and aircraft by officers; and
- (b) declare places to be, for the purposes of this Act, ports, and fix their limits; and
- (c) declare, for the purposes of this Act, wharfs within ports, and fix their limits; and
- (d)<sup>54</sup> declare places, whether within the limits of a port or otherwise, to be, for the purposes of this Act, airports, and fix their limits; and
- (e)<sup>55</sup> declare places connected by land with another country, as port of entry for passengers, goods and vehicles.

(2)<sup>56</sup> <sup>57</sup>Ports, ports of entry, wharfs and airports may be declared for specified limited purposes or without limitation.

**8. SUFFERANCE WHARFS AND PLACES FOR EXAMINATION OF GOODS.**

The Commissioner General may, by notice in the National Gazette—

- (a) appoint sufferance wharfs in any port; and
- (b) appoint places for the examination of goods on landing.

**9. PROVISION OF ACCOMMODATION ON WHARFS, ETC.**

<sup>58</sup>Each wharf owner and airport owner must provide, to the satisfaction of the Collector—

- (a)<sup>59</sup> suitable office accommodation on his wharf or at his airport for the exclusive use of the officer employed at the wharf or airport; and

<sup>54</sup> Section 7(1)(d) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>55</sup> Section 7(1)(e) added by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s3(a).

<sup>56</sup> Section 7(2) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3; amended by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s3(b).

<sup>57</sup> Section 7(2) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3; amended by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s3(b).

<sup>58</sup> Section 9 amended by No. 18 of 1982, Sched. 1; amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>59</sup> Section 9(a) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.



(b)<sup>60</sup> such shed accommodation for the protection of goods as the Commissioner General declares, in writing, to be necessary.

Penalty: <sup>61</sup>Subject to Sections 163 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 10. LICENSING OF CARRIAGES, ETC.

<sup>62</sup>(1) On payment of such fees and subject to such conditions as are prescribed, carriages, boats and lighters may be licensed for the carriage of goods subject to the control of the Customs.

(2) The licence for a carriage, boat or lighter may be revoked by the Collector if the licensee—

(a) is guilty of any fraud or misconduct; or

(b) fails to comply with this Act.

(3) A person who uses an unlicensed carriage, boat or lighter for the conveyance of goods subject to the control of the Customs is guilty of an offence.

Penalty: <sup>63</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 11. WORKING DAYS AND HOURS.

<sup>64</sup>The working days and hours of the Customs are as prescribed and, except when the working of overtime is permitted by the Collector, cargo must be received, loaded or worked on, or discharged from, a ship or aircraft only on working days and during working hours.

Penalty: <sup>65</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 12. OVERTIME CHARGES.

When the working of overtime by an officer is permitted, overtime at prescribed rates shall be charged for the services of the officer.

<sup>60</sup> Section 9(b) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5 .

<sup>61</sup> Section 9: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 9 Amended by No. 13 of 2001, Sched. 1.

<sup>62</sup> Section 10 amended by No. 18 of 1982, Sched. 1.

<sup>63</sup> Section 10(3): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 10 Subsection (3) amended by No. 13 of 2001, Sched. 1.

<sup>64</sup> Section 11 amended by No. 18 of 1982, Sched. 1.

<sup>65</sup> Section 11: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 11 Amended by No. 13 of 2001, Sched. 1.

**PART III. – CUSTOMS SECURITIES.****13. REQUIREMENT OF SECURITY.**

(1) The Customs may–

- (a) require and take security for compliance with this Act, and generally for the protection of the public revenue; and
- (b) pending the giving of the required security in relation to any goods subject to the control of the Customs, refuse to deliver the goods or to pass any entry relating to the goods.

(2)<sup>66</sup> <sup>67</sup>When security is required for a particular purpose, it may, by authority of the Commissioner General, be accepted to cover all transactions for such time and for such amount as the Commissioner General approves.

**14. CUSTOMS SECURITIES.**

(1) Where a security is required by or under this Act, it may, in the discretion of a Collector, be given–

- (a) by bond; or
- (b) by guarantee; or
- (c) by cash deposit,

or partly by one such method and partly by another.

(2) The prescribed form of Customs security is sufficient for all the purposes of a bond or guarantee under this Act, and, without sealing, binds its subscribers–

- (a) as if sealed; and
- (b) unless otherwise provided in it–jointly and severally for the full amount.

(3) If at any time the Commissioner General is not satisfied with the sufficiency of a security, he may require fresh security to be given, and fresh security shall be given accordingly.

(4)<sup>68</sup> <sup>69</sup>A Customs security may be cancelled by the Commissioner General after the expiration of the period of 12 months after–

- (a) the date of the security; or
- (b) the time specified for the performance of the conditions of the security.

<sup>66</sup> Section 13(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>67</sup> Section 13(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>68</sup> Section 14(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5. *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s1.

<sup>69</sup> Section 14(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5. *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s1.

**15. EFFECT OF CUSTOMS SECURITIES.**

(1) Where a Customs security is put in suit by the Collector, the production of the security entitles the Collector, without further proof, to judgement, for their stated liability, against the persons appearing to have executed it, unless they prove—

- (a) compliance with the conditions of the security; or
- (b) that the security was not executed by them; or
- (c) release; or
- (d) satisfaction.

(2) If it appears to the court that a non-compliance with a Customs security has occurred—

- (a) the security shall not be deemed to have been discharged or invalidated; and
- (b) the subscribers shall not be deemed to have been released or discharged from liability,

by reason of—

- (c) any extension of time or other concession; or
- (d) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
- (e) the Collector having failed to take proceedings against the subscribers on a previous non-compliance with the condition.

**PART IV. – CUSTOMS CONTROL, ENTRIES, ETC.**

*Division 1.*

*Customs Control.*

**16. CUSTOMS CONTROL OF GOODS.**

<sup>70</sup>(1) Goods are subject to the control of the Customs as follows:–

- (a) imported goods–from the time of importation until–
  - (i) delivery for home consumption; or
  - (ii) exportation,

whichever first happens;

- (b) goods under drawback–from the time of the claim for drawback until they are exported;
- (c) goods subject to export duty–from the time when the goods are brought to any port or place for export until payment of the duty;
- (d) goods for export the exportation of which is subject to compliance with any condition or restriction under any Act–from the time when the goods are made or prepared in, or are brought into, any prescribed place for export until they are exported;
- (e)<sup>71</sup> goods on board a ship, boat or aircraft from a place outside the country–whilst the ship, boat or aircraft is within a port or airport in the country.

(2) Goods imported through the post are subject to the control of the Customs in the same manner as goods otherwise imported.

(3)<sup>72</sup> <sup>73</sup>A person who, otherwise than by authority and in accordance with this Act, moves, alters or interferes with goods, or directs or permits another person to move, alter or interfere with goods subject to the control of the Customs, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

<sup>70</sup> Section 16 amended by No. 18 of 1982, Sched. 1.

<sup>71</sup> Section 16(1)(e) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>72</sup> Section 16(3): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 16 Subsection (3) amended by No. 13 of 2001, Sched. 1; Section 16 Subsection (3) substituted by No. 10 of 2005, s. 2.

<sup>73</sup> Section 16(3): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 16 Subsection (3) amended by No. 13 of 2001, Sched. 1; Section 16 Subsection (3) substituted by No. 10 of 2005, s. 2.

**16A. ACCESS TO A CUSTOMS CONTROLLED AREA.**

<sup>74</sup>(1) The owner or operator of a facility containing a customs controlled area shall not grant or allow to be granted to any person, access to that area, unless that person –

- (a) has been authorised by the Commissioner-General in accordance with any section of this Act or the Regulations or
- (b) is a prescribed person or a member of a prescribed class of persons as described in the Regulations.

(2) A person who –

- (a) grants access to a Custom Controlled Area to another person in contravention of Subsection (1); or
- (b) who intentionally directs or permits another person to grant access to a Customs controlled Area to a person in contravention of Subsection (1),

is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(3) Any person found to be in a restricted area who is not authorized to be in that area, is guilty of an offence and shall be liable upon conviction to a fine not exceeding K10,000.00 for the first offence and a fine to be calculated in increments of up to K5,000.00 for each subsequent offence.

(4) It is a defence to a prosecution of a person for a contravention of Subsection (1), if that person took reasonable precautions and exercised due diligence, to prevent the grant of access by the employee who is alleged to have granted a person such access to a Customs Controlled Area in contravention of that section.

**16B. POWER TO QUESTION PERSONS IN A CUSTOMS CONTROLLED AREA.**

<sup>75</sup>(1) In this section, “appropriate identification” means –

- (a) if a person is a member of the crew of an international ship or aircraft –
  - (i) a current passport; or
  - (ii) a document issued by the shipping or airline company having control of the ship or aircraft concerned setting out the full name and nationality of the person and the passport number or other official identification number of the person; and
- (b) if the person is not a member of the crew of such a ship or aircraft –

<sup>74</sup> Section 16A Inserted by No. 10 of 2005, s. 3.

<sup>75</sup> Section 16B Inserted by No. 10 of 2005, s. 3.

- (i) a document issued by the employer of the person providing photographic identification of the employee and setting out the person's full name; or
- (ii) a document issued by, or by an instrumentality of, the State providing photographic identification of the person and setting out the person's full name; or
- (iii) a document, being a temporary visitors pass, issued by the owner or operator of the facility setting out the person's full name and details of their driver's licence or other photographic identification document as proof of identity of the person.

(2) An officer may question any person found in or on a Customs Controlled Area and may –

- (a) request that person to produce appropriate identification for the officer's inspection, in order to establish –
  - (i) the persons name; and
  - (ii) the person's reason for being there; and
  - (iii) evidence of the person's identity; and
  - (iv) whether any offence against any customs related law is being committed; and
- (b) request the person to leave the area forthwith, if the person, being other than a crew member of an international ship or aircraft, is unable to establish his identity or to explain his presence in the customs controlled area; and
- (c) remove them, using only as much force is necessary in the circumstances, if that person refuses or fails to produce appropriate identification or refuses or fails to leave the area as directed; and
- (d) return a person to a ship or aircraft forthwith to obtain identification if he claims to be a member of the crew of an international ship or aircraft and refuses or fails to produce appropriate identification on request.

(3) A person, who refuses or fails to answer questions truthfully or to produce on demand appropriate identification to a Customs officer, is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## **16C. PROVIDING CUSTOMS WITH INFORMATION ABOUT PEOPLE ISSUED WITH SECURITY IDENTIFICATION CARDS.**

<sup>76</sup>(1) A person who issues a security identification card to another person in respect of a Customs Controlled Area must provide to an authorised officer, on written request, the required identity information in respect of the person if the

<sup>76</sup> Section 16C Inserted by No. 10 of 2005, s. 3.

authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against Customs-related law.

(2) The person to whom a request is made under Subsection (1) does not comply with the obligation under that section to provide the information unless he provides it –

- (a) in writing; or
- (b) in such other form as the authorized officer directs in writing; and
- (c) within 5-days after receiving the request.

(3) A person, who fails to comply with a request from an authorized officer under this section, is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

#### **16D. POWER TO SEARCH AND SEIZE GOODS.**

<sup>77</sup>(1) An officer may detain –

- (a) any person found in or on a Customs Controlled Area; or
- (b) any person who has had access to a Customs Controlled Area within a reasonable time after that person leaves the area,

and may search that person if the officer suspects, on reasonable grounds, that the person has secreted on or about his person –

- (c) anything in respect of which any Customs-related law has been or might be contravened; or
- (d) anything that would afford evidence with respect to a contravention of any Customs-related law; or
- (e) any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

(2) An officer may seize any thing found or a person as a result of a search conducted under Subsection (1) that –

- (a) would afford evidence with respect to a contravention of any Customs-related law; or
- (b) are goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

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<sup>77</sup> Section 16D Inserted by No. 10 of 2005, s. 3.

**16E. REQUIREMENT TO DISPLAY SIGNS AT A CUSTOMS CONTROLLED AREA.**

<sup>78</sup>(1) The operator of a place containing a Customs Controlled Area is required to display signs, as prescribed, identifying the place and stating that entry into it by unauthorised persons is prohibited by this Act.

(2) A person, who fails to comply with Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

**17. POWER TO EXAMINE GOODS.**

<sup>79</sup>(1) An officer may –

- (a) at any time up to the time of release from a Customs Controlled Area, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts; and
- (b) at any time up to the time of exportation, examine any goods that have been delivered to a Customs Controlled Area and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts; and
- (c) examine any goods in the custody or possession of a person found in or on, or leaving, a customs controlled area and open or cause to be opened any baggage, package or container and take samples of the goods in reasonable amounts, if the officer suspects on reasonable grounds that this Act or any other Act of Parliament administered or enforced by the officer or any Regulations made under it have been or might be contravened in respect of the goods.

(2) The power to examine goods under this section extends to items imported and exported through the mail.

**17A<sup>80</sup>. [REPEALED.]**

**18. COMPENSATION FOR LOSS.**

The State is not liable for any loss or damage occasioned, otherwise than by the neglect or wilful act of an officer, to any goods subject to the control of the Customs.

<sup>78</sup> Section 16E Inserted by No. 10 of 2005, s. 3.

<sup>79</sup> Section 17 Substituted by No. 10 of 2005, s. 3.

<sup>80</sup> Section 17A inserted by No 26 of 2000; Subsection (3) inserted by No. 27 of 2003, s. 2; Repealed by No. 17 of 2004, s. 2.



***Division 2.***  
***Entry of Goods.***

**19. ENTRIES.**

<sup>81</sup>(1)<sup>82</sup> <sup>83</sup>Entries may be made for all goods subject to the control of the Customs in accordance with the regulations relating to the requirement to enter goods.

(2) Subject to Subsection (3), an entry in respect of any goods shall be made by the delivery to a Collector of an entry specifying the goods, and on the delivery of the entry the goods shall, for the purposes of this Act, be deemed to have entered.

(3)<sup>84</sup> <sup>85</sup>Where an entry in respect of any goods is delivered to a Collector at a port or airport or port of entry five days before the arrival at the port or airport or port of entry of a conveyance carrying the goods, then for the purposes of this Act—

- (a) the entry shall be deemed to be made; and
- (b) the goods shall be deemed to have entered,

on the arrival of a conveyance at the port or airport or port of entry.

(4)<sup>86</sup> <sup>87</sup>At any time before examination of goods or assessment of duty,, an entry made in respect of the goods may, with the consent of the Collector, be withdrawn.

(5) Where—

- (a) an entry for the removal of any goods to a place specified in the entry has been made but not passed; and
- (b) the Collector is of the opinion that—
  - (i) for the protection of the revenue of the Customs; or
  - (ii) for the purpose of ensuring compliance with this Act in relation to the goods,

it is undesirable that the goods should be removed to that place; and

- (c) the Collector, by written notice to the owner of the goods, requires the entry to be withdrawn,

<sup>81</sup> Section 19 amended by No. 18 of 1982, Sched. 1.

<sup>82</sup> Section 19 Subsection (1) substituted by No. 10 of 2005, s. 4.

<sup>83</sup> Section 19 Subsection (1) substituted by No. 10 of 2005, s. 4.

<sup>84</sup> Section 19 Subsection (3) amended by No. 17 of 2004, s. 3; Section 19(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 19(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 19 Subsection (3) substituted by No. 10 of 2005, s. 4.

<sup>85</sup> Section 19 Subsection (3) amended by No. 17 of 2004, s. 3; Section 19(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 19(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 19 Subsection (3) substituted by No. 10 of 2005, s. 4.

<sup>86</sup> Section 19 Subsection (4) amended by No. 17 of 2004, s. 3.

<sup>87</sup> Section 19 Subsection (4) amended by No. 17 of 2004, s. 3.

the owner of the goods shall promptly comply with the notice, and for that purpose shall be deemed to have the consent of the Collector to withdraw the entry.

(6) Where an entry for home consumption has been made in respect of goods, a person who purports to make further entry in respect of those goods, or any part of those goods, is guilty of an offence unless the first-mentioned entry has been withdrawn in accordance with Subsection (4).

Penalty: <sup>88</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(7) A person making an entry shall, if required by the Collector, answer questions relating to the goods referred to in the entry.

(8)<sup>89</sup> <sup>90</sup>A person making an entry shall pay an entry processing fee as prescribed.

#### **19A. RELEASE OF GOODS WITHOUT ENTRY.**

<sup>91</sup>(1) The owner of goods of a kind referred to in the Regulations that do not require an entry to be made shall provide information relating to those goods at such a time and in such a manner and form as the Regulation specify.

(2) Customs shall authorize the delivery into home consumption of those goods as though those goods had been entered.

(3) A person, who fails to provide information in accordance with Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K2,000.00.

#### **20. AUTHORITY TO DEAL WITH ENTERED GOODS.**

<sup>92</sup>(1) Where an entry has been made in respect of goods, Customs shall give the owner of the goods an entry advice, by document or computer, permitting the goods to be dealt with in accordance with this section.

(2) Where goods are authorised to be taken into home consumption, to be warehoused or to be transhipped, the authority to deal, whether given by document or computer, must set out –

- (a) subject to Subsection (3), any condition, to which the authority is subject; and
- (b) the date on which the authority is given; and
- (c) such other information as is prescribed.

<sup>88</sup> Section 19(6): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 19 Subsection (6) amended by No. 13 of 2001, Sched. 1.

<sup>89</sup> Section 19 Subsection (8) inserted by No. 17 of 2004, s. 3.

<sup>90</sup> Section 19 Subsection (8) inserted by No. 17 of 2004, s. 3.

<sup>91</sup> Section 19A Inserted by No. 10 of 2005, s. 5.

<sup>92</sup> Section 20 Substituted by No. 10 of 2005, s. 6.

(3) An authority to deal with goods may be made to be subject to a condition that a specified permission for the goods to be dealt with be obtained under Customs-related law or another law of Papua New Guinea.

(4) Where an authority to deal with goods is made subject to the condition that a specified permission be obtained, the authority to deal is taken not to have been given until the permission (proof of such a permission being obtained lies with the owner of the goods), has been obtained.

(5) At any time before goods authorised to be taken into home consumption, warehoused or transhipped are so dealt with, an officer may cancel that authority by –

- (a) serving or transmitting a notice on the person who made the entry; or
- (b) if that person does not have possession of the goods, on the person who is in possession of the goods,

setting out the reasons for that cancellation.

(6) A cancellation under Subsection (5) has effect from the moment the notice is served or transmitted, as the case requires.

## **21A. APPLICATION FOR MOVEMENT PERMISSION.**

<sup>93</sup>(1) Where goods are subject to Customs control, application may be made to Customs, by document or by computer, for permission to move those goods to a place specified in the application.

(2) When an application is communicated to Customs under Subsection (1), a Collector must, in a form approved by the Commissioner-General –

- (a) give the applicant permission to move the goods either absolutely or subject to such conditions as are specified in the notice; or
- (b) refuse the application and set out in the notice the reasons for that refusal.

(3) Where a person moves goods otherwise than in accordance with a permission issued under Subsection (2), the goods are deemed to have been moved without authority.

(4) If goods are not moved in accordance with a permission issued under Subsection (2), a Collector may arrange for the goods to be moved to a warehouse.

(5) Where a Collector has arranged for goods to be moved to a warehouse, Customs has a lien on the goods for any expenses incurred in connection with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods.

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<sup>93</sup> Section 21A Inserted by No. 10 of 2005, s. 6.

**21. DEALING WITH ENTERED GOODS.**

<sup>94</sup>All goods in respect of which an entry has been made and must be dealt with without delay in accordance with the entry advice..

Penalty: <sup>95</sup>Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

**22. EXCEPTION FOR PASSENGERS' BAGGAGE.**

Goods that are the personal baggage of passengers in a ship or aircraft and are not dutiable goods may, subject to any prescribed conditions, be imported or exported without entry.

***Division 3.*<sup>96</sup>*****Entry at land border.*****22A. LAND BORDER.**

<sup>97</sup>(1) Subject to this section, every person arriving in or departing from Papua New Guinea through a land border shall, except in such circumstances and such conditions as may be prescribed, enter or depart Papua New Guinea at a port of entry.

(2) For the purposes of Subsection (1), all persons departing or leaving must present themselves without delay to an officer on duty and answer truthfully any questions asked by the officer.

(3) All the provisions of this Act relating to passengers, goods and conveyances shall, unless otherwise prescribed, apply to the entry or departure of goods, passengers and conveyances at a port of entry.

(4) Section 30 and 42 are taken to be complied with in respect of the land border if a report is made at the time of arrival or departure at the port of entry to an officer doing duty.

**22B. TRADITIONAL INHABITANTS.**

<sup>98</sup>(1) A person who is a traditional inhabitant, as prescribed, shall be exempt from any requirement under this Act to make a declaration or report to Customs in respect of –

- (a) goods that are the personal belongings of that person; or

<sup>94</sup> Section 21 Amended by No. 10 of 2005, s. 7; amended by No. 18 of 1982, Sched. 1.

<sup>95</sup> Section 21: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 21 Amended by No. 13 of 2001, Sched. 1.

<sup>96</sup> Division 3 inserted by *Customs (Budget Provisions 2000) Act* 1999 (No 16 of 1999), s4.

<sup>97</sup> Section 22A inserted by *Customs (Budget Provisions 2000) Act* 1999 (No 16 of 1999), s4; Substituted by No. 10 of 2005, s. 8.

<sup>98</sup> Section 22B Inserted by No. 10 of 2005, s. 8.

- (b) goods that are owned by, or are under the control of, that person and have been used, are being used or are intended to be used by him in connection with the performance of traditional activities; or
- (c) any conveyance that has been used, is being used or is intended to be used by that person in connection with the performance of traditional activities.

(2) For the purposes of Subsection (1), a person ceases to be a traditional inhabitant if he has in his possession any commercial or smuggled goods or allows the conveyance to be used for the carriage of persons or goods not connected to the performance of traditional activities.

**PART V. – THE IMPORTATION OF GOODS.*****Division 1.******Control of Importation.*****23. REGULATION OF IMPORTS.**

<sup>99</sup>(1) The regulations may prohibit the importation of goods into the country.

(2) The power conferred by Subsection (1) may be exercised—

- (a) by prohibiting the importation of goods absolutely; or
- (b) by prohibiting the importation of goods from a specified place; or
- (c) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

(3) Without limiting the generality of Subsection (2)(c), the regulations may provide—

- (a) that the importation of the goods is prohibited unless a licence or permission to import the goods has been granted as prescribed; and
- (b) that a licence or permission so granted may be subject to conditions or requirements to be complied with, by the person to whom it is granted, either before or after the importation of the goods in respect of which the licence or permission has been granted.

(4) Where a licence or permission granted to a person under the regulations is subject to a condition or requirement to be complied with by him, he must comply with the condition or requirement.

Penalty: <sup>100</sup>If not narcotic – subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

If narcotic – as provided by Section 160.

(5) Goods the importation of which is prohibited under this section are prohibited imports.

***Division 2.******The Boarding of Ships and Aircraft.*****24. BOARDING OF SHIPS, ENTRY OF GOODS, ETC.**

For the purpose of securing the due importation of goods—

- (a) a ship or aircraft may be boarded; and
- (b) the cargo shall be reported; and

<sup>99</sup> Section 23 amended by No. 18 of 1982, Sched. 1.

<sup>100</sup> Section 23(4): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 23 Subsection (4) amended by No. 13 of 2001, Sched. 1.

(c) the goods shall be entered and unshipped and may be examined.

## 25. ENTRY OF SHIPS, AIRCRAFT AND VEHICLES.

<sup>101</sup>(1) The person in charge of a conveyance, who, unless from stress of weather or other reasonable cause, permits his conveyance to enter any place other than a port or airport or port of entry, is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00.

(2) Subsection (1) does not apply if the master, pilot or driver has the permission of a Collector given under Subsection (3).

(3) A Collector may grant the person in charge of a conveyance, on written application by that person to the Collector, permission to bring the conveyance to, or to remain at, a place other than a port or an airport or a port of entry.

(4) A permission granted under Subsection (3) shall be issued by notice in writing and is subject to any conditions specified in the notice.

(5) The Collector may, at any time by notice in writing served on the person –

- (a) revoke the permission; or
- (b) revoke or vary a condition to which the permission is subject; or
- (c) impose new conditions to which the permission is to be subject.

(6) A person to whom permission has been given under Subsection (3), who and refuses or fails to comply with any condition to which that permission is subject, is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00.

## 25A. CONVEYANCE DEEMED TO BE IMPORTED.

<sup>102</sup>(1) Where a conveyance has entered Papua New Guinea and a Collector, after making such inquiries as he thinks appropriate, has reason to believe that the conveyance might have been imported into Papua New Guinea, he may serve a notice, as prescribed, stating that, if the conveyance remains in Papua New Guinea throughout the period of 30 days commencing on the day on which the notice was served, it shall be deemed to have been imported into Papua New Guinea and shall be forfeited to the State.

(2) A Collector may extend the period specified in a notice under Subsection (1), if he considers that it is reasonable to do so after having regard to any relevant

<sup>101</sup> Section 25 amended by No. 18 of 1982, Sched. 1; Section 25 amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 25: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 25 Amended by No. 13 of 2001, Sched. 1; Section 25 Substituted by No. 10 of 2005, s. 9.

<sup>102</sup> Section 25A Inserted by No. 10 of 2005, s. 9.

matter, by serving an amended notice in an approved form specifying the period by which the period has been extended.

(3) Where a notice under Subsection (1) or (2) has been served, a Collector may, before the expiration of the period specified in the notice, revoke that notice.

(4) A Collector shall serve a notice under Subsection (1) or (2) in respect of a conveyance by –

- (a) serving it on the owner or operator of the conveyance; or
- (b) causing the notice to be affixed to a prominent part of the conveyance; or
- (c) if circumstances do not allow for service of the notice under Paragraph (a) and (b), publishing the notice in a newspaper circulating generally in Papua New Guinea.

(5) Where –

- (a) a Collector has served a notice under Subsection (1) or (2) in respect of a conveyance; and
- (b) the notice has not been revoked under Subsection (3); and
- (c) the conveyance has remained in Papua New Guinea throughout the period specified in the notice; and
- (d) an entry has not been made in respect of the conveyance during that period,

the conveyance shall, for the purpose of this Act, be deemed to have been imported into Papua New Guinea on the expiration of that period or that period as extended, as the case requires.

(6) The proceeds of any sale of goods to which this section applies shall be applied to amounts owed by the debtor, any expenses incurred by the State in respect of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.

## **26. BRINGING TO AND LANDING GENERALLY.**

<sup>103</sup>(1) If the master of a ship from a place outside the country bound to or calling at a port fails to bring his ship to for boarding at the boarding station appointed for the port, he is guilty of an offence.

(2)<sup>104</sup> <sup>105</sup>If the pilot of an aircraft from a place outside the country bound to or calling at any place within the country fails to bring his aircraft for boarding to the airport nearest to the place at which he enters the country, he is guilty of an offence.

Penalty: <sup>106</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00

<sup>103</sup> Section 26 amended by No. 18 of 1982, Sched. 1.

<sup>104</sup> Section 26(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>105</sup> Section 26(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.



**27. BRINGING TO OR LANDING ON SIGNAL.**

<sup>107</sup>(1) If the master of a ship arriving within three nautical miles of the coast fails to bring his ship to for boarding on being approached by, or hailed or signalled from—

- (a) a vessel or aircraft in the service of the Customs, that has hoisted the Customs flag; or
- (b) a vessel or aircraft in the service of the State, that has hoisted the proper ensign and pendant or displays the proper signal,

he is guilty of an offence.

(2)<sup>108</sup> <sup>109</sup>If the pilot of an aircraft arriving within three nautical miles of the coast fails to bring his aircraft to the nearest airport for boarding on being approached by, or hailed or signalled from—

- (a) a vessel or aircraft in the service of the Customs, that has hoisted the Customs flag; or
- (b) a vessel or aircraft in the service of the State, that has hoisted the proper ensign and pendant or displays the proper signal,

he is guilty of an offence.

Penalty: <sup>110</sup>Subject to Sections 163, 164 and 165, a fine not exceeding K3,000.00.

**28. FACILITATION OF BOARDING BY OFFICERS.**

<sup>111</sup>(1) An officer may be stationed on board any conveyance that has arrived in Papua New Guinea from a place outside Papua New Guinea for the purpose of doing anything he is required or authorised to do in the administration or enforcement of this or any other Custom-related law.

(2) An officer stationed on board a conveyance pursuant to Subsection (1) shall be carried free of charge, and the person in charge of the vessel, aircraft or conveyance shall ensure that the officer is provided with suitable accommodation and food.

(3) The master of a ship bringing it to port, or the pilot of an aircraft landing at an airport, for boarding by an officer in accordance with this section, who fails to facilitate by all reasonable means boarding by the officer, or fails to comply with Subsections (1) or (2), is guilty of an offence.

<sup>106</sup> Section 26(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 26 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>107</sup> Section 27 amended by No. 18 of 1982, Sched. 1.

<sup>108</sup> Section 27(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>109</sup> Section 27(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>110</sup> Section 27(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

<sup>111</sup> Section 28 amended by No. 18 of 1982, Sched. 1; Section 28 amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 28: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 28 Amended by No. 13 of 2001, Sched. 1; Section 28 Substituted by No. 10 of 2005, s. 10.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 29. MOVEMENT TO AND FROM PLACE OF UNLOADING.

<sup>112</sup>(1)<sup>113</sup> <sup>114</sup>If, after his ship or aircraft has been brought to at the boarding station or landed at the airport and boarded by the officer, the master of a ship, or the pilot of an aircraft, as the case may be, fails to come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place, he is guilty of an offence.

(2)<sup>115</sup> <sup>116</sup>After arrival at the proper place of mooring or unloading, a ship or an aircraft must not, except by authority or by direction of the harbour or aerial authority, be removed from that place before the discharge of the cargo intended to be discharged at the port or airport.

Penalty: <sup>117</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

### *Division 3.*

#### *The Report of the Cargo, etc.*

## 30. REPORT OF CARGO.

<sup>118</sup>(1) A pilot or owner of an aircraft arriving from a place outside the country, who fails –

- (a)<sup>119</sup> to report, not less than 3 hours prior to the arrival at an airport, the aircraft and its cargo by sending to the Collector an inward manifest of goods for the airport; or
- (b) to answer questions relating to the aircraft and its cargo, crew, passengers, stores an voyage; or
- (c) to send or produce documents relating to the aircraft and its cargo,

is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K10,000.00.

<sup>112</sup> Section 29 amended by No. 18 of 1982, Sched. 1.

<sup>113</sup> Section 29(1) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>114</sup> Section 29(1) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>115</sup> Section 29(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>116</sup> Section 29(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>117</sup> Section 29(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 29 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>118</sup> Section 30 amended by No. 18 of 1982, Sched. 1; Section 30(a) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 30: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 30 Amended by No. 13 of 2001, Sched. 1; Section 30 Substituted by No. 17 of 2004, s. 4.

<sup>119</sup> Section 30 Subsection (1) amended by No. 10 of 2005, s. 11.

(2) A master or owner of a ship arriving from a place outside the country, who fails –

- (a)<sup>120</sup> to report, not less than 24 hours prior to the arrival at a port, the ship and her cargo by sending the Collector an inward manifest of goods for the port; or
- (b) to answer questions relating to the ship and her cargo, crew, passengers, stores and voyage; or
- (c) to send or produce documents relating to the ship and her cargo,

is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K10,000.00.

### 31. REPORT OF WRECKED SHIP OR AIRCRAFT.

<sup>121</sup>(1) If the master or owner of a ship that is lost or wrecked on the coast fails to report the ship and cargo as soon as practicable by delivering to the Collector a manifest, so far as it is possible for him to do so–

- (a) at the Customs House nearest to the place where the ship was lost or wrecked; or
- (b) at the Chief Customs House,

he is guilty of an offence.

(2) If the pilot or owner of an aircraft arriving from a place outside the country that is lost or wrecked at any place within the country fails to report the aircraft and cargo as soon as practicable by delivering to the Collector a manifest, so far as it is possible for him to do so–

- (a) at the Customs House nearest to the place where the aircraft was lost or wrecked; or
- (b) at the Chief Customs House,

he is guilty of an offence.

Penalty: <sup>122</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

### 32. REPORT OF DERELICT, ETC., GOODS.

<sup>123</sup>(1) A person who has in his possession any dutiable goods, derelict, flotsam, jetsam, lagan or wreck must deliver them or it to an officer as soon as practicable.

<sup>120</sup> Section 30 Subsection (2) amended by No. 10 of 2005, s. 11.

<sup>121</sup> Section 31 amended by No. 18 of 1982, Sched. 1.

<sup>122</sup> Section 31(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 31 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>123</sup> Section 32 amended by No. 18 of 1982, Sched. 1.

Penalty: <sup>124</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(2) A person who, otherwise than by authority, unnecessarily moves, alters or interferes with any goods referred to in Subsection (1) is guilty of an offence.

Penalty: <sup>125</sup>Subject to Sections 163, 164 and 165, a fine not exceeding K3,000.00.

#### ***Division 4.***

#### ***The Entry, Unshipment, Landing and Examination of Goods.***

### **33. ENTRY INWARDS.**

Imported goods shall be entered—

- (a) for home consumption; or
- (b) for warehousing; or
- (c) for transshipment.

### **34<sup>126</sup>. [REPEALED.]**

### **35. MAKING OF ENTRIES.**

(1) Subject to Subsection (2), entries shall be made of the whole of any cargo unshipped or to be unshipped within such time after the report of the ship or aircraft as is prescribed or such further time (if any) as the Collector allows.

(2) If the goods are placed in quarantine, at least seven days shall be allowed for entry after their release from quarantine.

(3)<sup>127</sup> <sup>128</sup>Notwithstanding Section 80A, if default is made in the entry of any goods under this section, and if 30 days have expired after the entry relating to those goods was assessed, the Collector may remove the goods to a warehouse.

(4)<sup>129</sup> <sup>130</sup>If goods removed under Subsection (3) are not claimed within 30 days from the date the goods were removed, the goods are deemed to be abandoned and are forfeited to the State.

(4A)<sup>131</sup> <sup>132</sup>The proceeds of any sale of goods subject to this section shall be applied to amount owed by the debtor, any expenses incurred by the State in respect

<sup>124</sup> Section 32(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 32 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>125</sup> Section 32(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

<sup>126</sup> Section 34 amended by No. 18 of 1982, Sched. 1; Section 34(4): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 34 Subsection (4) amended by No. 13 of 2001, Sched. 1; Section 34 Repealed by No. 10 of 2005, s. 12.

<sup>127</sup> Section 35 Subsection (3) substituted by No. 10 of 2005, s. 13.

<sup>128</sup> Section 35 Subsection (3) substituted by No. 10 of 2005, s. 13.

<sup>129</sup> Section 35 Subsection (4) substituted by No. 10 of 2005, s. 13.

<sup>130</sup> Section 35 Subsection (4) substituted by No. 10 of 2005, s. 13.

of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.

(5) If any goods removed under Subsection (3) are of a perishable nature, they may be sold at such time, before or after warehousing, as the Collector thinks fit.

### 35A. ASSESSMENT OF DUTY.

<sup>133</sup>(1) Where an entry is made in accordance with Section 35(1), the Collector may assess such duty as in his opinion is chargeable as customs duty.

(2) Where an assessment is made under this section, the Collector shall issue a notice in writing of the assessment and the duty payable to the owner or agent of the goods.

### 36. BREAKING BULK.

<sup>134</sup>The bulk cargo of a ship or aircraft arriving within three nautical miles of the coast must not be broken except with the permission of the Collector or as regards goods for which entry has been passed.

Penalty: <sup>135</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

### 37. UNSHIPMENT.

<sup>136</sup>(1)<sup>137</sup> <sup>138</sup>Except as prescribed, goods may be unshipped only under a Collector's permit.

(2) Unshipped goods must be—

(a)<sup>139</sup> landed at a wharf or airport—

(i) directly; or

(ii)<sup>140</sup> after conveyance to the wharf or airport in a licensed carriage, boat or lighter from the ship or aircraft; or

(b) transhipped to the ship or aircraft into which they are to be transhipped—

(i) directly; or

<sup>131</sup> Section 35 Subsection (4A) inserted by No. 10 of 2005, s. 13.

<sup>132</sup> Section 35 Subsection (4A) inserted by No. 10 of 2005, s. 13.

<sup>133</sup> Section 35A Inserted by No. 17 of 2004, s. 5.

<sup>134</sup> Section 36 amended by No. 18 of 1982, Sched. 1.

<sup>135</sup> Section 36: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 36 Amended by No. 13 of 2001, Sched. 1.

<sup>136</sup> Section 37 amended by No. 18 of 1982, Sched. 1.

<sup>137</sup> Section 37 Subsection (1) amended by No. 10 of 2005, s. 14.

<sup>138</sup> Section 37 Subsection (1) amended by No. 10 of 2005, s. 14.

<sup>139</sup> Section 37(2)(a) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>140</sup> Section 37(2)(a)(ii) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

- (ii) after conveyance to the ship or aircraft in a licensed carriage, boat or lighter direct from the ship or aircraft from which they were unshipped.

Penalty: <sup>141</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

### **38. LANDING OF GOODS ON PERMIT.**

<sup>142</sup>(1) Goods unshipped and landed under a Collectors permit shall be placed by, and at the expense of, the master or owner of the ship, or the pilot or owner of the aircraft, from which they were unshipped in a place of security approved by the Collector.

Penalty: <sup>143</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(2) Goods placed in a place of security in accordance with Subsection (1) are, until unlawfully removed from it, at the risk of the master or owner of the ship, or the pilot or owner of the aircraft, as the case may be, as if they had not been unshipped.

### **39. REPACKING, ETC.**

<sup>144</sup>Goods may, by authority, be repacked or skipped on the wharf or at the airport.

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<sup>141</sup> Section 37(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 37 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>142</sup> Section 38 amended by No. 18 of 1982, Sched. 1.

<sup>143</sup> Section 38(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 38 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>144</sup> Section 39 amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

## PART VI. – EXPORTATION OF GOODS.

### 40. CONTROL OF EXPORTS.

(1) The regulations may prohibit the export of goods.

(2) The power conferred by Subsection (1) may be exercised—

(a) by prohibiting the exportation of goods absolutely; or

(b) by prohibiting the exportation of goods to a specified place; or

(c) by prohibiting the exportation of goods unless prescribed conditions or restrictions are complied with.

(3) Goods the exportation of which is prohibited under this section are prohibited exports.

### 41. SIZE OF EXPORTING VESSELS.

<sup>145</sup>Except with the permission of the Collector, goods subject to the control of the Customs must not be exported in a ship of less than 50 tons gross register.

Penalty: <sup>146</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

### 42. ENTRY OUTWARDS.

<sup>147</sup>(1)<sup>148</sup> <sup>149</sup>Subject to this section—

(a) a ship or aircraft must be entered outwards; and

(b)<sup>150</sup> goods proposed to be exported on the ship or aircraft must be entered for export,

before any of the goods are taken on board the ship or aircraft and with 3 days before entry outwards.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(2)<sup>151</sup> [*Repealed.*]

(3) A ship or aircraft may, by permission of the Collector, be stiffened before entry outwards or export entry.

<sup>145</sup> Section 41 amended by No. 18 of 1982, Sched. 1.

<sup>146</sup> Section 41: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 41 Amended by No. 13 of 2001, Sched. 1.

<sup>147</sup> Section 42 amended by No. 18 of 1982, Sched. 1.

<sup>148</sup> Section 42(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 42 Subsection (1) amended by No. 13 of 2001, Sched. 1; Section 42 Subsection (1) substituted by No. 17 of 2004, s. 6.

<sup>149</sup> Section 42(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 42 Subsection (1) amended by No. 13 of 2001, Sched. 1; Section 42 Subsection (1) substituted by No. 17 of 2004, s. 6.

<sup>150</sup> Section 42 Subsection (1) amended by No. 10 of 2005, s. 15.

<sup>151</sup> Section 42 Subsection (2) omitted by No. 17 of 2004, s. 6.

**43. ENTRIES IN REGARD TO ARMS, EXPLOSIVES, ETC.**

<sup>152</sup>(1) Subject to Subsection (2), the true character of any arms, explosives or naval or military stores entered for export or transshipment must be clearly shown in the entry made in relation to them.

Penalty: <sup>153</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

(2) Subsection (1) does not apply to arms, explosives or naval or military stores the property of the State, Australia or the Government of the United Kingdom.

**44. SHIPPING OF GOODS.**

<sup>154</sup>Goods subject to the control of the Customs for export or removal coastwise must be shipped—

(a)<sup>155</sup> directly at a wharf or airport; or

(b)<sup>156</sup> after conveyance to the ship or aircraft in a licensed carriage, boat or lighter direct from a wharf or airport.

Penalty: <sup>157</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

**45. SHORT-SHIPPED GOODS.**

<sup>158</sup>Where goods entered for export are not shipped according to the entry—

(a) the owner must—

(i) promptly report the fact to an officer; and

(ii) amend his entry for the goods not later than three days after the clearance of the ship or aircraft; and

(b) if dutiable, the goods must be immediately warehoused.

Penalty: <sup>159</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

**46. PRODUCTION OF DOCUMENTS AND SECURITY FOR EXPORT.**

The Collector may require the owner—

<sup>152</sup> Section 43 amended by No. 18 of 1982, Sched. 1.

<sup>153</sup> Section 43(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 43 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>154</sup> Section 44 amended by No. 18 of 1982, Sched. 1.

<sup>155</sup> Section 44(a) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>156</sup> Section 44(b) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>157</sup> Section 44: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 44 Amended by No. 13 of 2001, Sched. 1.

<sup>158</sup> Section 45 amended by No. 18 of 1982, Sched. 1.

<sup>159</sup> Section 45: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 45 Amended by No. 13 of 2001, Sched. 1.



- (a) to produce documents for any goods entered for export; and
- (b) in the case of goods subject to the control of the Customs, to give security that they will be—
  - (i) landed at the place for which they are entered; or
  - (ii) otherwise accounted for to the satisfaction of the Collector.

#### 47. CERTIFICATES OF CLEARANCE.

<sup>160</sup>(1)<sup>161</sup> <sup>162</sup>The master of a ship or the pilot of an aircraft who departs with his ship or aircraft from a port or airport without receiving from the Collector a Certificate of Clearance is guilty of an offence.

Penalty: <sup>163</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

(2) Before a Certificate of Clearance is granted to a ship or aircraft—

- (a) the master, owner or pilot of the ship or aircraft shall deliver to the Collector an outward manifest in duplicate; and
- (b) the master and owner of the ship, or the pilot and owner of the aircraft, shall—
  - (i) answer any questions asked by the Collector relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and
  - (ii) produce documents relating to the ship or aircraft and her cargo.

(3) A Certificate of Clearance shall not be granted for a ship or aircraft unless—

- (a) all her inward cargo and stores have been accounted for to the satisfaction of the Collector; and
- (b) all the other requirements of the law in regard to her and to her inward and outward cargo have been complied with.

(4) If at the end of a period of 24 hours after Subsection (2) has been complied with the master or pilot has not received from the Collector a Certificate of Clearance, he may, at any time within 14 days after the expiration of that period, apply to the Minister for a Certificate of Clearance.

(5) The Minister may grant or refuse an application under Subsection (4) and his decision is final.

(6) Where, under Subsection (5), the Minister has refused to grant a Certificate of Clearance, the owner of the ship or aircraft is entitled to recover, in any court of

<sup>160</sup> Section 47 amended by No. 18 of 1982, Sched. 1.

<sup>161</sup> Section 47(1) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>162</sup> Section 47(1) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>163</sup> Section 47(1): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 47 Subsection (1) amended by No. 13 of 2001, Sched. 1.

competent jurisdiction, damages against the State in respect of the refusal to grant, or delay in granting, the Certificate of Clearance, if the court is satisfied that the refusal or delay was without reasonable and probable cause.

(7) Except as provided in Subsection (6), proceedings do not lie against the State or an officer of Papua New Guinea because of—

- (a) the refusal to grant a Certificate of Clearance; or
- (b) any delay in the granting of a Certificate of Clearance.

(8) A copy of the outward manifest shall be—

- (a) attached to the Certificate of Clearance; and
- (b) sealed with the seal of the Customs.

#### 48. SHIPMENT OF UNSPECIFIED GOODS.

<sup>164</sup>The master of a ship or the pilot of an aircraft who permits any goods, other than passengers' baggage, not specified or referred to in the outward manifest to be taken on board his ship or aircraft except as provided in Section 42 is guilty of an offence.

Penalty: <sup>165</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

#### 49. BRINGING TO AT PROPER STATION, ETC., ON DEPARTURE.

<sup>166</sup>(1) The master of a ship departing from a port who—

- (a) fails to bring his ship to at the boarding station for the port; or
- (b) fails to facilitate, by all reasonable means, boarding by an officer; or
- (c) departs with his ship from a port with an officer on board the ship in the discharge of his duty, without the consent of the officer,

is guilty of an offence.

(2) The pilot of an aircraft departing from an airport who—

- (a)<sup>167</sup> fails to bring his aircraft to the boarding station for the port or airport;  
or
- (b) fails to facilitate, by all reasonable means, boarding by an officer; or
- (c)<sup>168</sup> departs with his aircraft from a port or airport with an officer on board the aircraft without the consent of the officer,

is guilty of an offence.

<sup>164</sup> Section 48 amended by No. 18 of 1982, Sched. 1.

<sup>165</sup> Section 48: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 48 Amended by No. 13 of 2001, Sched. 1.

<sup>166</sup> Section 49 amended by No. 18 of 1982, Sched. 1.

<sup>167</sup> Section 49(2)(a) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>168</sup> Section 49(2)(c) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

Penalty: <sup>169</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

## 50. ACCOUNTING FOR MISSING GOODS.

<sup>170</sup>The master of a ship or the pilot of an aircraft must, after the clearance of the ship or aircraft—

- (a) produce the Certificate of Clearance on demand by an officer; and
- (b) account to the satisfaction of the Collector for any goods specified or referred to in the outward manifest and not on board his ship or aircraft.

Penalty: <sup>171</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 51. UNSHIPING IN PAPUA NEW GUINEA OF GOODS FOR EXPORT.

<sup>172</sup>Goods shipped for export must not be unshipped or landed in the country without the permission of the Collector.

Penalty: <sup>173</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 52. CERTIFICATES AS TO DUE LANDING OF EXPORTED GOODS.

(1)<sup>174</sup> <sup>175</sup>If required by the Commissioner General, a certificate in the prescribed form, given by a prescribed person, shall be produced in proof of the due landing, according to the export entry, of any goods subject to the control of the Customs.

(2) The Collector may refuse to allow any goods subject to the control of the Customs to be exported by any person who fails—

- (a) to produce within a reasonable time the certificate of the landing of any goods previously exported by him; or
- (b) to account within a reasonable time for any such goods to the satisfaction of the Collector.

<sup>169</sup> Section 49(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 49 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>170</sup> Section 50 amended by No. 18 of 1982, Sched. 1.

<sup>171</sup> Section 50: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 50 Amended by No. 13 of 2001, Sched. 1.

<sup>172</sup> Section 51 amended by No. 18 of 1982, Sched. 1.

<sup>173</sup> Section 51: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 51 Amended by No. 13 of 2001, Sched. 1.

<sup>174</sup> Section 52(1) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>175</sup> Section 52(1) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

**PART VII. – THE WAREHOUSING OF GOODS.**

*Division 1.*

*Licensed Warehouses.*

**53. WAREHOUSING OF DUTIABLE GOODS.**

Subject to Section 69, dutiable goods may be warehoused in licensed warehouses.

**54. LICENSING OF WAREHOUSES.**

(1) A licence—

(a)<sup>176</sup> shall be issued for a warehouse for the storage of goods subject to the control of the Customs upon payment of such fees and subject to such conditions as are prescribed;

(b)<sup>177</sup> [*Repealed.*]

(c)<sup>178</sup> may be renewed by the Commissioner General; and

(d)<sup>179</sup> may be revoked by the Commissioner General in such circumstances or for such reasons as are prescribed.

(2) There shall be the following classes of licensed warehouses:—

(a) Class I (general warehouses), which may be used for warehousing goods generally;

(b) Class II (private warehouses), which may be used only for warehousing goods the property of the licensee;

(c) Class III (machinery warehouses), which may be used only for warehousing machinery and similar heavy or bulky goods;

(d) Class IV (manufacturing warehouses), which may be used for—

(i) warehousing goods for use, under such conditions as are prescribed, in the warehouse in any manufacture, trade or process; and

(ii) carrying on in the warehouse any manufacture, trade or process;

(e) Class V (transit warehouses), which may be used only for the temporary warehousing of goods.

(3) The fees payable by licensees for warehouses—

(a) are as prescribed; and

(b) shall be paid within such periods or at such times as are prescribed.

<sup>176</sup> Section 54 Subsection (1) amended by No. 10 of 2005, s. 16.

<sup>177</sup> Section 54 Subsection (1) amended by No. 10 of 2005, s. 16.

<sup>178</sup> Section 54(1)(c) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>179</sup> Section 54(1)(d) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

(4)<sup>180</sup> <sup>181</sup>In default of payment of any part of a fee under Subsection (3) for 30 days after the prescribed time for payment, the Commissioner General may, by notice in the National Gazette, cancel the licence.

(5) On the cancellation under Subsection (4) of a licence—

- (a) the warehouse shall be closed; and
- (b) the goods in the warehouse shall be removed by the Collector to some other warehouse.

#### 54A. OUTWARDS DUTY FREE SHOPS.

<sup>182</sup>(1) In this section—

**“international flight”** means a flight, whether direct or indirect, by an aircraft between a place in Papua New Guinea from which the aircraft takes off and a place outside Papua New Guinea at which the aircraft lands or is intended to land;

**“outwards duty free shops”** means a warehouse in respect of which the relevant warehouse licence authorizes the sale in the warehouse of goods to relevant travellers;

**“place outside Papua New Guinea”** does not include—

- (a) a ship, or an area of waters, outside Papua New Guinea; or
- (b) an installation outside Papua New Guinea; or
- (c) a reef, or an uninhabited island, outside Papua New Guinea;

**“proprietor”**, in relation to an outwards duty free shop, means the holder of the warehouse licence that relates to the outwards duty free shop;

**“relevant traveller”** means a person who intends to make an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft.

(2) Subject to the regulations (if any), the Commissioner of Customs may give permission, in accordance with Subsection (3), for goods that are specified in the permission and are sold to a relevant traveller in an outwards duty free shop that is specified in the permission to be—

- (a) delivered to the relevant traveller personally for export by him when making the international flight in relation to which he is a relevant traveller; and
- (b) exported by the relevant traveller when making that flight without the goods having been entered for export,

<sup>180</sup> Section 54(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>181</sup> Section 54(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>182</sup> Section 54A inserted by *Customs (Budget Provisions 1996) Act 1995* (No. 42 of 1995), s1.

and, subject to Subsection (13), the permission is authority for such goods to be so delivered and so exported.

(3) Permission under Subsection (2) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the outwards duty free shop to which the permission relates.

(4) Permission under Subsection (2) may relate to particular goods, all goods, goods included in a specified class or classes or goods or goods other than goods included in a specified class or classes of goods.

(5) Without limiting the matters that may be prescribed in regulations referred to in Subsection (2), those regulations—

- (a) may prescribe circumstances in which permission under that subsection may be given; and
- (b) may prescribe matters to be taken into account by the Commissioner of Customs when deciding whether to give permission under that subsection; and
- (c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) The Commissioner of Customs may, when giving permission under Subsection (2) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Commissioner of Customs, are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of Subsection (5)(c) or Subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be—

- (a) a condition to be complied with by the proprietor of the outwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold; or
- (b) a condition that the permission only applies to sales to relevant travellers who comply with a prescribed requirement or requirements, which may be, or include, a requirement that relevant travellers produce to the proprietor of the outwards duty free shop to which the permission relates or to a servant or agent of that proprietor a ticket or other document, being a document approved by the Commissioner of Customs for the purposes of this paragraph, showing that the relevant traveller is entitled to make the international flight in relation to which he is a relevant traveller; or
- (c) a condition that the proprietor of the outwards duty free shop to which the permission relates will keep records specified in the regulations and will notify the Commissioner of Customs of all sales made by him to which the permission applies.

(8) A condition imposed in respect of a permission under Subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the outwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under Subsection (5)(c) or Subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under Subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under Subsection (2) is subject to—

- (a) a condition that the proprietor of the outwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply; and
- (b) the condition that the proprietor will provide the Commissioner of Customs with proof, in a prescribed way and within a prescribed time, of the export of goods delivered to a relevant traveller in accordance with the permission.

(11) A person, who is required to comply with a condition imposed in respect of a permission under Subsection (2) and who fails to comply with the condition, is guilty of an offence.

Penalty: <sup>183</sup>Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

(12) Where the proprietor of an outwards duty free shop to which a permission under Subsection (2) relates does not produce the proof required by Subsection (10)(b) that goods delivered by him to a relevant traveller in accordance with the permission have been exported by that traveller, the goods shall be deemed to have been entered, and delivered for home consumption by the proprietor, as owner of the goods, on the day on which the goods are delivered to that traveller.

(13) The Commissioner may, in accordance with the regulations, revoke a permission given under Subsection (2) in relation to the sale of goods occurring after the revocation.

(14) Where the Commissioner makes a decision under—

- (a) Subsection (2) refusing to give permission to the proprietor of an outwards duty free shop; or
- (b) Subsection (13) revoking a permission given under Subsection (2),

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<sup>183</sup> Section 54A Subsection (11) amended by No. 13 of 2001, Sched. 1.

he shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Commissioner of Customs' findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

#### 54B. INWARDS DUTY FREE SHOPS.

<sup>184</sup>(1) In this section—

**“international flight”** means a flight, whether direct or indirect, by an aircraft between a place outside Papua New Guinea from which the aircraft takes off and a place in Papua New Guinea at which the aircraft landed;

**“inwards duty free shop”** means a warehouse at an airport in respect of which the relevant warehouse licence authorizes the sale in the warehouse of goods to relevant travellers;

**“place outside Papua New Guinea”** does not include—

- (a) a ship, or an area of waters, outside Papua New Guinea; or
- (b) an installation outside Papua New Guinea; or
- (c) a reef, or an uninhabited island, outside Papua New Guinea;

**“proprietor”**, in relation to an inwards duty free shop, means the holder of the warehouse licence that relates to the inwards duty free shop;

**“relevant traveller”** means a person who—

- (a) arrived in Papua New Guinea on an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft; and
- (b) has not been questioned, for the purposes of this Act, by an officer of Customs in respect of goods carried on that flight.

(2) A warehouse licence is not to authorize the sale in the warehouse of goods to relevant travellers where the warehouse—

- (a) is situated at an airport; and
- (b) is so isolated that passengers on international flights who arrive at that airport would not normally have access to the warehouse before being questioned for the purposes of this Act by officers of Customs.

(3) Subject to the regulations (if any), the Commissioner of Customs may give permission, in accordance with Subsection (4), for airport shop goods that are specified in the permission and are sold to a relevant traveller in an inwards duty free shop that is specified in the permission to be—

- (a) delivered to the relevant traveller; and

<sup>184</sup> Section 54B inserted by *Customs (Budget Provisions 1996) Act 1995* (No. 42 of 1995), s2.



- (b) taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance through Customs of the personal baggage of the relevant traveller.

(4) Permission under Subsection (3) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the inwards duty free shop to which the permission relates.

(5) Without limiting the matters that may be prescribed in regulations referred to in Subsection (3), those regulations—

- (a) may prescribe circumstances in which permission under that subsection may be given; and
- (b) may prescribe matters to be taken into account by the Commissioner of Customs when deciding whether to give permission under that subsection; and
- (c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) The Commissioner of Customs may, when giving permission under Subsection (3) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Commissioner of Customs, are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act, and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of Subsection (5)(c) or Subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be—

- (a) a condition to be complied with by the proprietor of the inwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold; or
- (b) a condition that the proprietor of the inwards duty free shop to which the permission relates will keep records specified in the regulations.

(8) A condition imposed in respect of a permission under Subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice in writing of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the inwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under Subsection (5)(c) or Subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under Subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under Subsection (3) is subject to the condition that the proprietor of the inwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission, with which they are required to comply.

(11) A person, who is required to comply with a condition imposed in respect of a permission under Subsection (3) and who fails to comply with the condition, is guilty of an offence.

Penalty: <sup>185</sup>Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

(12) The Commissioner of Customs may, in accordance with the regulations, revoke a permission given under Subsection (3) in relation to the sale of goods occurring after the revocation.

(13) Where the Commissioner of Customs makes a decision—

(a) under Subsection (3) refusing to give permission to the proprietor of an inwards duty free shop; or

(b) under Subsection (12) revoking a permission given under Subsection (3),

the Commissioner of Customs shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

## 55. GENERAL DUTIES OF LICENSEES.

<sup>186</sup>(1) The licensee of a warehouse must—

(a) stack and arrange the goods in the warehouse so that reasonable access to, and examination of, each package may be had at all times; and

(b) provide sufficient lights and just scales and weights for the use of the officer; and

(c) find all labour and materials necessary for the storing, examining, packing, marking, cooping, weighing and taking stock of the warehoused goods when the Collector wishes it; and

(d) pay the duty on all warehoused goods—

(i) removed from his warehouse, otherwise than by authority; or

(ii) not produced to the officer on demand,

unless they are accounted for to the satisfaction of the Collector.

Penalty: <sup>187</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

<sup>185</sup> Section 54B Subsection (11) amended by No. 13 of 2001, Sched. 1.

<sup>186</sup> Section 55 amended by No. 18 of 1982, Sched. 1.

(2) The licensee of a warehouse must—

- (a)<sup>188</sup> keep such records, and furnish to the Commissioner General such returns, in relation to goods deposited in the warehouse, as the Commissioner General directs; and
- (b)<sup>189</sup> retain any records so kept for such period as the Commissioner General directs; and
- (c) on demand by an officer, produce the records to the officer.

Penalty: <sup>190</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(3) An officer may inspect and take copies of, or extracts from, any records kept under Subsection (2).

## **56. ACCOUNT OF GOODS TO BE WAREHOUSED.**

(1) On the landing of any goods to be warehoused, or as soon as practicable after their landing, an officer shall—

- (a) take a particular account of the goods; and
- (b) enter the account in a book.

(2) Subject to this Act, the account taken under Subsection (1) is the account on which the duties shall be ascertained and paid.

(3) Where the Collector is satisfied that an account taken under Subsection (1) is incorrect because of error or for other cause, he may direct the amendment of the account, and the amended account is the account on which the duties shall be ascertained and paid.

## **57. DEPOSIT OF GOODS IN WAREHOUSES.**

When any goods entered for warehousing have been duly deposited in a warehouse, an officer shall certify, by signing a receipt for the goods, that the warehousing is complete.

## **58. REMOVAL OF GOODS TO WAREHOUSE.**

(1) Where goods entered to be warehoused are not warehoused accordingly by the owner, the Collector may remove them to the warehouse named in the entry or to a Government warehouse.

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<sup>187</sup> Section 55(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 55 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>188</sup> Section 55(2)(a) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>189</sup> Section 55(2)(b) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>190</sup> Section 55(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 55 Subsection (2) amended by No. 13 of 2001, Sched. 1.

(2) Where goods have been removed under Subsection (1) to a warehouse, the licensee of the warehouse, or in the case of removal to a Government warehouse the Collector—

- (a) shall pay all charges for the removal of the goods; and
- (b) has a lien on the goods for the charges.

**59. PACKAGING OF GOODS FOR WAREHOUSING.**

(1) Subject to Subsection (2), goods entered for warehousing shall be warehoused in the packages in which they were imported.

(2) Goods repacked or skipped on the wharf shall be warehoused in the packages in which they were when the account was taken.

**60. REPACKING IN WAREHOUSE.**

(1) The Collector may, as prescribed, permit the owner to sort, bottle, pack or repack goods in a warehouse.

(2) Where goods are sorted, bottled, packed or repacked in a warehouse, a fresh account of the goods—

- (a) shall be taken by the officer; and
- (b) shall be substituted for the original account.

**61. MANUFACTURE OF GOODS IN WAREHOUSES.**

In the prescribed cases, warehoused goods in manufacturing warehouses may be utilized in the prescribed manner for manufacturing purposes, and the manufactured article may be delivered for home consumption, subject only to the payment of such duty (if any) as is prescribed.

**62. REMOVAL OF GOODS FROM PRIVATE WAREHOUSE TO GENERAL WAREHOUSE.**

(1) The Collector may require the owner of any goods in a private warehouse—

- (a) to remove them to some general warehouse; or
- (b) to pay the duty on the goods,

within a time specified by the Collector.

(2) If an order under Subsection (1) is not complied with, the goods may be sold by the Collector.

**63. MAXIMUM PERIOD OF WAREHOUSING.**

<sup>191</sup>Goods warehoused in a warehouse for twelve months shall, if not removed, be sold by the Collector.

**64. ACCESS BY COLLECTOR TO WAREHOUSES.**

The Collector—

- (a) shall be allowed access, at all hours of the day and night, to every part of any warehouse; and
- (b) may examine the goods in the warehouse; and
- (c) for the purpose of Paragraph (a) or (b), may break open the warehouse or any premises necessary to be passed through to secure access.

**65. RE-GAUGING OR RE-WEIGHING OF WAREHOUSED GOODS.**

Warehoused goods may be re-gauged, re-measured, re-weighed or examined by an officer—

- (a) by direction of the Collector; or
- (b) at the request and expense of the owner,

and duty is payable according to the result, unless the Collector is of the opinion that any loss shown is excessive, when the duty shall be paid on the original entry with any reduction that the Collector thinks proper to allow.

**66. RE-VALUATION OF WAREHOUSED GOODS.**

Warehoused goods that are subject to an ad valorem duty and that have deteriorated in value may, on the application of the owner, be re-valued, and if the Collector is satisfied that the deterioration has been accidentally caused duty shall be paid according to the result.

**67. SALE OF WAREHOUSED GOODS IF DUES IN ARREAR.**

If the warehouse dues on any warehoused goods are in arrear for nine months, the goods may be sold by the Collector.

**68. DESTRUCTION OF WAREHOUSED GOODS NOT WORTH DUTY.**

(1) The Commissioner General—

- (a) may cause any warehoused goods that, in the opinion of the Collector, are not worth the duty payable on the goods to be destroyed; and
- (b) may remit the duty.

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<sup>191</sup> Section 63 Amended by No. 27 of 2003, s. 3; amended by *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s2.

(2) The owner of any goods destroyed under Subsection (1) shall pay to the licensee of the warehouse, or if goods were in a Government warehouse, to the Collector, the rent and charges payable in respect of the destroyed goods.

#### **69. WAREHOUSING OF DANGEROUS GOODS.**

<sup>192</sup>(1) Goods of a combustible or inflammable nature must not be warehoused except by permission of the Collector.

Penalty: <sup>193</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

(2) If any goods of a combustible or inflammable nature are landed, they may be deposited in a safe available place approved by the Collector.

(3) While any goods are deposited in accordance with Subsection (2), they—

- (a) shall be deemed to be in a Government warehouse; and
- (b) are liable to be sold by the Collector at the expiration of 14 days in the same manner as goods of a perishable nature deposited in a Government warehouse, unless they are duly cleared or warehoused in a warehouse with the approval of the Collector; and
- (c) are charged with the expenses of removing, securing, watching and guarding until sold.

#### **70. ENTRY OF WAREHOUSED GOODS AND GOODS ENTERED FOR WAREHOUSING.**

(1) Warehoused goods may be entered—

- (a) for home consumption; or
- (b) for export; or
- (c) for removal for warehousing elsewhere.

(2) Where after any goods have been entered for warehousing, whether on importation or removal, and before they have been actually warehoused they are entered for home consumption, export or removal, they—

- (a) shall be considered as constructively warehoused; and
- (b) may be delivered for home consumption, export or removal as if actually warehoused.

<sup>192</sup> Section 69 amended by No. 18 of 1982, Sched. 1.

<sup>193</sup> Section 69(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 69 Subsection (1) amended by No. 13 of 2001, Sched. 1.

*Division 2.*

*Government Warehouses.*

**71. APPOINTMENT, ETC., OF GOVERNMENT WAREHOUSES.**

(1) The Commissioner General may, by notice in the National Gazette, appoint Government warehouses.

(2) Government warehouses—

(a) are wholly under the control of the Customs; and

(b) are specially available for the examination of goods and the storage of seized and unclaimed goods,

but otherwise all the provisions of this Act relating to warehouses apply, as far as Practicable, to Government warehouses.

**72. RENT AND CHARGES FOR WAREHOUSING IN GOVERNMENT WAREHOUSES.**

Rent and charges according to the prescribed scale are payable in respect of any goods warehoused in a Government warehouse.

**73. MAXIMUM PERIOD OF WAREHOUSING.**

<sup>194</sup>If any goods warehoused in a Government warehouse are not lawfully removed within twelve months after warehousing, the goods may be sold by the Collector.

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<sup>194</sup> Section 73 Amended by No. 27 of 2003, s. 4.

**PART VIII. – SHIPS’ AND AIRCRAFT’S STORES.****74. USE OF SHIPS’ AND AIRCRAFT’S STORES.**

Ships’ stores and aircraft’s stores, whether shipped inside or outside the country, shall not be–

- (a) unshipped or unloaded without the consent of the Collector; and
- (b) used before the departure of the ship or aircraft from its last port of departure in the country otherwise than for the use of the passengers or crew, or for the service, of the ship or aircraft.

**75. UNSHIPMENT OF SHIPS’ AND AIRCRAFT’S STORES.**

Ships’ stores and aircraft’s stores that are unshipped or unloaded with the consent of the Collector shall be entered–

- (a) for home consumption; or
- (b) for warehousing; or
- (c) for transshipment to another ship or aircraft.

**76. EXEMPTION FROM DUTY.**

Ships’ stores and aircraft’s stores used by the passengers or crew, or for the service, of the ship or aircraft, other than ships’ stores or aircraft’s stores that are specified in the regulations as being stores to which this section does not apply, are not liable to duties of Customs.

**77. LIABILITY TO DUTY.**

(1) Where any ships’ stores or aircraft’s stores that are specified in the regulations as being stores to which Section 76 does not apply are consumed, used or otherwise disposed of in the country, the master or owner of the ship, or the pilot or owner of the aircraft, as the case may be, shall, immediately before the ship or aircraft leaves the last port of departure in the country, deliver to the Collector a list in the prescribed form, verified by declaration, setting out the ships’ stores or aircraft’s stores so consumed, used or disposed of since the arrival of the ship or aircraft at the first port of call in the country.

(2) Duty, at the rate in force at the time when the declaration under Subsection (1) was made, shall be paid on the stores so consumed, used or disposed of.

**78. TAKING ON BOARD OF STORES.**

(1) The master or owner of a ship, or the pilot or owner of an aircraft, entered outwards for a place outside the country may apply, in the prescribed form, to the Collector for permission to take on board stores for the use of the passengers and crew, and for the service, of the ship or aircraft on the voyage to be undertaken.



(2) The Collector may grant permission to the master, pilot or owner to take on board such stores as the Collector, having regard to—

- (a) the voyage to be undertaken; and
- (b) the number of passengers and crew to be carried,

determines.

**PART IX. – THE DUTIES.*****Division 1.******Payment and Computation of Duties Generally.******Subdivision A. – Liability to and Payment of Duty.*****79. PAYMENT OF IMPORT DUTIES.**

Import duties are payable at the rate in force when entry is made of the goods for home consumption.

**80. PAYMENT OF EXPORT DUTIES.**

Export duties are finally payable at the rate in force when the goods are actually exported, but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.

**80A. DATE OF PAYMENT OF DUTIES.**

<sup>195</sup>(1) Any duty specified in a notice of assessment is due and payable on the date specified in the notice, being a date not less than 5 clear working days after the date of the issue of the notice of assessment.

(2) Where an amount of duty specified in a notice of assessment under this section is not paid on or before the date specified in the notice and the notice has been issued to the owner or agent of the goods, the owner or agent of the goods shall pay to the Collector, in addition to the duty so specified, interest on the unpaid duty at the rate of 8% of the amount of the unpaid duty for each 5 day period or part thereof for which the duty remains unpaid from the date for payment specified in the notice until the duty is paid.

(3) The Collector may reduce or remit any penalty payable under this section.

(4) If a dispute arises as to the amount of the duty on any goods or the interest penalty remitted under Subsection (3), the provisions of Section 176 shall apply.

**81. CURRENCY OF PAYMENT.**

All duties are payable in Papua New Guinea currency.

**82. GOVERNMENT PROPERTY.**

<sup>196</sup>Subject to this Act, goods being the property of the State are liable to customs duty (where applicable).

<sup>195</sup> Section 80A Inserted by No. 17 of 2004, s. 7.

<sup>196</sup> Section 82 repealed and replaced by *Customs (Budget Provisions) Act 1994* (No. 32 of 1994), s1.

**83. DERELICT, ETC., GOODS.**

Goods that are derelict, flotsam, jetsam or lagan or landed, saved or come ashore from a wreck, or sold by a Receiver of Wreck under the *Merchant Shipping* 1975, shall be charged with duty as if imported in the ordinary course.

**84. GOODS IN MANIFEST BUT NOT PRODUCED, ETC.**

Where dutiable goods that are included in the report of a ship or aircraft are not produced to an officer, the master or owner of the ship, or the pilot or owner of the aircraft, shall, on demand by the Collector, pay the duty on the goods as estimated by the Collector, unless the goods are accounted for to the satisfaction of the Collector.

**85. SAMPLES.**

(1) Small samples of the bulk of any goods subject to the control of the Customs may, subject to the prescribed conditions, be delivered free of duty.

(2) Goods the produce of the country or samples of duty-paid goods sent out of the country may, subject to any prescribed conditions, be re-imported or brought back to the country without payment of duty.

***Subdivision B. – Computation and Payment Generally.*****86. ASCERTAINMENT OF WEIGHTS AND MEASURES.**

Where duties are imposed according to weight or measure, the weight or measurement of the goods shall be ascertained according to the standard weights and measures established by law.

**87. PROPORTIONATE CALCULATIONS.**

Where duties are imposed according to a specified quantity, weight, size or value, the duties apply in proportion to any greater or lesser quantity, size, weight or value.

**88. DETERMINATION OF DUTY BY REFERENCE TO REPUTED SIZE OR QUANTITY.**

Where goods are sold or prepared for sale as, or are reputed to be, of a size or quantity greater than their actual size or quantity, duties shall be charged according to the first-mentioned size or quantity.

**89. CALCULATION OF DUTY BY MEASUREMENT.**

(1) Goods charged with duty by measurement shall, at the expense of the owner, be heaped, piled, sorted, framed or otherwise placed in such manner as the Collector requires to enable measurement and account of the goods to be taken.

(2) Where the goods are measured in bulk, the measurement shall be taken to the full extent of the heap or pile.

#### **90. STRENGTH OF SPIRITS.**

(1) The strength of spirits may be ascertained, for the purposes of duty, by means of a hydrometer approved by the Commissioner General.

(2) If, in the opinion of the Collector, the strength of any spirits cannot immediately be accurately ascertained by hydrometer, the strength may be ascertained after distillation or in any prescribed manner.

#### **91. GOODS FALLING WITHIN TWO OR MORE ITEMS IN THE CUSTOMS TARIFF CLASSIFICATION.**

<sup>197</sup>Where, for any reason, goods are classifiable under two or more Tariff Items of the Tariff Classification specified in Schedule 1 to the *Customs Tariff Act 1990*, classification shall be effected as follows:—

- (a) the Tariff Item which provides the most specific description shall be preferred to other Tariff Items providing a more general description, but, where two or more Tariff Items each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the goods in a set put up for retail sale, those Tariff Items are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;
- (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put in sets for retail sale, which cannot be classified by reference to Paragraph (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;
- (c) when goods cannot be classified by reference to Paragraphs (a) and (b), they shall be classified under the Tariff Item which occurs last in numerical order among those which equally merit consideration.

#### **92. SUBSTITUTES FOR DUTIABLE GOODS.**

<sup>198</sup>Where goods are imported that, in the opinion of the Commissioner General—

- (a) are a substitute for any dutiable goods; or
- (b) are intended to be used, or can be used—
  - (i) as a substitute for any dutiable goods; or

<sup>197</sup> Section 91 replaced by No. 41 of 1983, s4; repealed and replaced by *Customs (Amendment) Act 1990* (No. 21 of 1990).

<sup>198</sup> Section 92 amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5; amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

- (ii) for any purpose for which any dutiable goods can be used; or
- (iii) for any similar purpose,

the Commissioner General may, by notice in the National Gazette, direct that the imported goods be charged with the duty chargeable on the dutiable goods referred to in Paragraph (a) or (b).

### 93. GOODS IN PARTS.

(1)<sup>199</sup> <sup>200</sup>Where dutiable goods are composed of two or more separate parts, any part, even if imported by itself, is chargeable with duty, if so directed by the Commissioner General, at the rate applicable to the complete goods.

(2)<sup>201</sup> <sup>202</sup>When the duty on the complete goods is—

- (a) specific only; or
- (b) either specific or ad valorem, according to whichever rate returns the highest duty; or
- (c) both specific and ad valorem,

the Commissioner General may fix the proportion of the specific rate that shall be applied in determining the amount of duty payable on any part of the goods.

### 94. CONDENSED ARTICLES.

Duty shall be charged on all essences, condensations, concentrations or preparations of goods liable to duty according to the quantity or equivalent of dutiable goods into which they can be converted, according to the prescribed standard.

#### *Division 2.*<sup>203</sup>

#### *Ad Valorem Duties.*

### 95. VALUE FOR DUTY.

<sup>204</sup>(1) The value of any imported goods for the purposes of the *Customs Tariff Act 1990* is, unless the contrary intention appears, the value for duty of the goods ascertained as prescribed.

(2) Goods exported to Papua New Guinea from another country, but passing through a third country, shall be valued for duty as if they were imported directly from the first-mentioned country.

<sup>199</sup> Section 93(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>200</sup> Section 93(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>201</sup> Section 93(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>202</sup> Section 93(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>203</sup> Division IX.2 repealed and replaced by *Customs (Amendment) Act 1986* (No. 44 of 1986), s3.

<sup>204</sup> Section 95 repealed and replaced by *Customs (Amendment) Act 1986* (No. 44 of 1986), s3.

(3) The value for duty of any goods sold at a Collectors sale shall, if approved by the Collector, be taken to be the value as shown by the sale.

## 96. ASCERTAINMENT OF VALUE FOR DUTY.

<sup>205</sup>(1) In this section—

“**current domestic value**”, in relation to any imported goods sold to a purchaser in Papua New Guinea, means the amount for which the seller is selling, or would be prepared to sell, for cash at the date of the export of the goods, the same quantity of identical goods to any and every purchaser in the country of export for consumption in that country, less the amount of any duty, tax, or charge that is not payable, or that would be remitted, in that country in relation to the goods if they were exported;

“**special deduction**”, in relation to any goods, means any discount or other deduction allowed to the importer in Papua New Guinea that would not ordinarily be allowed to any and every purchaser at the date of export of an equal quantity of identical goods.

(2) Where duty is imposed according to value, the value for duty is the higher of—

- (a) the actual money price paid or to be paid for the goods by the importer, plus any special deduction; and
- (b) the current domestic value of the goods,

plus all charges paid or payable, or ordinarily payable, for placing the goods free on board at the port of export.

(3) In the case of goods consigned for sale in Papua New Guinea, the value for duty of the goods is the amount that would be the value for duty of the goods within the meaning of Subsection (2) if the goods had been sold to an importer in Papua New Guinea at the date of export.

## 97. PRODUCTION OF GENUINE INVOICES.

<sup>206</sup>(1) In this section—

“**current domestic value**” has the same meaning as in Section 96;

“**genuine invoice**” means—

- (a) the original invoice prepared and issued by the seller in the country from which the goods were exported, showing, *inter alia*—
  - (i) the true description of the goods; and
  - (ii) the country of their origin; and

<sup>205</sup> Section 96 repealed and replaced by *Customs (Amendment) Act 1986* (No. 44 of 1986), s3.

<sup>206</sup> Section 96 repealed and replaced by *Customs (Amendment) Act 1986* (No. 44 of 1986), s3.

- (iii) the actual money price paid or to be paid for the goods by the importer in Papua New Guinea; and
  - (iv) the current domestic value; and
  - (v) where in arriving at the actual money price paid or to be paid allowance has been made in respect of any special deduction—the nature and amount of the deduction; or
- (b) in the case of goods consigned for sale in Papua New Guinea—a document complying in all respects with the requirements of Paragraph (a) that shows the particulars that would be required to be shown if the goods were sold to an importer in Papua New Guinea instead of being consigned for sale in Papua New Guinea;

“special deduction” has the same meaning as in Section 96.

(2)<sup>207</sup> <sup>208</sup>When entry is made of goods on which duty is imposed according to value, the owner shall produce to a collector on request the genuine invoice and any supporting documentation relating to the calculation of the value for duty of the goods.

(3 - 4)<sup>209</sup> [*Repealed.*]

(5) If the Collector is satisfied—

- (a) that no genuine invoice has been issued for the goods; or
- (b) that the genuine invoice for the goods cannot be produced,

he may, on receipt of evidence to his satisfaction of the value for duty of the goods, dispense with the production of the genuine invoice.

## 98. CONVERSION OF CURRENCIES.

<sup>210</sup>(1) Where an amount that is, under any other provision of this Act, required to be taken into account for the purpose of ascertaining the value for duty of any goods is not an amount in Papua New Guinea currency, the amount to be taken into account is the equivalent of that amount in Papua New Guinea currency, ascertained according to a fair rate of exchange at the date of export of the goods.

(2)<sup>211</sup> <sup>212</sup>For the purposes of this section, where the Commissioner General thinks it desirable to do so for the avoidance of doubt he may specify, by notice in the National Gazette, a rate that shall be deemed to be, or to have been, a fair rate of exchange in relation to any currency—

- (a) on a date, or during a period, preceding the date of publication of the notice; or

<sup>207</sup> Section 97 Subsection (2) substituted by No. 10 of 2005, s. 17.

<sup>208</sup> Section 97 Subsection (2) substituted by No. 10 of 2005, s. 17.

<sup>209</sup> Section 97 Subsection (2) substituted by No. 10 of 2005, s. 17.

<sup>210</sup> Section 98 repealed and replaced by *Customs (Amendment) Act* 1986 (No. 44 of 1986), s3.

<sup>211</sup> Section 98(2) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>212</sup> Section 98(2) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

- (b) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3) The rate of exchange specified in relation to any currency under Subsection (2) is, in relation to the value for duty of any goods exported on the date or during the period to which the rate so specified applies, the rate of exchange that shall be applied for the purposes of Subsection (1) in respect of the currency specified in the notice.

- (4)<sup>213</sup> <sup>214</sup>In any case in which—

- (a) the rate of exchange to be applied is not ascertained by virtue of Subsection (3); and
- (b) doubt exists as to that rate,

the Commissioner General may specify a fair rate of exchange to be applied for the purposes of the particular case.

## 99. ASSESSMENT OF VALUE.

<sup>215</sup>(1) Where the Collector has a doubt as to the accuracy of the declared value of any dutiable goods, he may detain the goods and assess their value.

(2) Where the owner objects to the value assessed under Subsection (1), he may request that the value be ascertained by experts in the prescribed manner.

(3) Where the owner refuses to pay the duty as assessed by the Collector or ascertained by experts, the Collector may sell the goods.

(4)<sup>216</sup> <sup>217</sup>This section does not apply in cases where the Commissioner General is of the opinion that an evasion of this Act has been committed or attempted.

## 100. DETERMINATION OF VALUE BY COMMISSIONER GENERAL.

<sup>218</sup>(1) Where it is difficult to determine the value of goods for duty because—

- (a) the goods are not sold for use or consumption in the country of production; or
- (b) a lease of the goods or of the right of using them is sold or given but not the right of property in the goods; or
- (c) the goods have a royalty imposed on them and the royalty—
- (i) is uncertain; or
- (ii) is not a reliable means of estimating the value of the goods; or

<sup>213</sup> Section 98(4) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>214</sup> Section 98(4) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>215</sup> Section 99 repealed and replaced by *Customs (Amendment) Act* 1986 (No. 44 of 1986), s3.

<sup>216</sup> Section 99(4) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>217</sup> Section 99(4) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>218</sup> Section 100 repealed and replaced by *Customs (Amendment) Act* 1986 (No. 44 of 1986), s3; Section 100: headnote amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.



- (d) the goods are usually or exclusively sold by or to agents or by subscription; or
- (e) the goods are sold or imported in, or under, any other unusual or peculiar manner or conditions,

the Commissioner General may determine the value for duty of the goods.

(2)<sup>219</sup> <sup>220</sup>For the purposes of a determination under Subsection (1), the Commissioner General is the judge of all matters referred to in Paragraphs (a) to (e) of that subsection.

### 101. COMPULSORY PURCHASE BY THE CUSTOMS.

<sup>221</sup>(1) For the protection of the revenue against the undervaluation of goods subject to ad valorem duty, any goods entered as being of a specified value may, at any time before sale and delivery to a person who proves to the satisfaction of the Collector that he purchased and took delivery in good faith and without any knowledge of the entry, be purchased, subject to the regulations, by the Customs at their declared value plus 10%.

(2) The purchase shall be effected by the seizure of the goods by an officer and the giving of written notice of the seizure to the owner.

(3) The officer shall remove the goods to a warehouse or some place of security, and the owner is thereupon entitled to the purchase money payable under Section (1).

(4) The goods—

- (a) become the property of the State immediately on seizure; and
- (b) shall be disposed of as is prescribed or as the Collector directs.

(5) A refund, in whole or in part, of any duty paid on the goods may be made by the Collector.

(6) This section does not limit or restrict any other power possessed by the Customs relating to the goods.

### *Division 3.*

#### *Short-paid Duty, Refunds, Remissions, Rebates, etc.*

### 102. SHORE-PAID DUTY.

<sup>222</sup>(1) When any duty has been short levied or erroneously refunded, the person, who should have paid the amount short levied or to whom the refund has erroneously been made, shall pay the amount short levied or repay the amount

<sup>219</sup> Section 100(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>220</sup> Section 100(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>221</sup> Section 101 repealed and replaced by *Customs (Amendment) Act 1986* (No. 44 of 1986), s3.

<sup>222</sup> Section 102 Substituted by No. 10 of 2005, s. 18.

erroneously refunded on demand being made by the Collector within five years from the date of the short levy or refund.

(2) For the purposes of Subsection (1), the fact that the short-levy or refund was made as a result of a Customs process shall not effect the right of Customs to demand payment or remove the obligation of the person to pay the amount.

(3) Subsection (2) shall not apply if Customs has provided a ruling to a person and the short-levy or erroneous refund was made in keeping with that ruling.

(4) For the purposes of Subsection (1), a drawback of duty shall be deemed to be a refund of duty.

### **103. EFFECTS OF ALTERATION OF DUTY BY CUSTOMS PRACTICE.**

If any practice of the Customs relating to the classification or enumeration of any article for duty is altered so that less duty is charged on the article, a person is not entitled to any refund on account of any duty paid before the alteration.

### **104. REFUNDS OF DUTY.**

(1) Where—

- (a) goods have been damaged or pillaged during the voyage; or
- (b) goods have, while subject to the control of the Customs, been damaged, pillages, lost or destroyed; or
- (c) duty has been paid through manifest error of fact or patent misconception of the law; or
- (d) the Collector is satisfied that, owing to a fault or defect in any goods, the importer of the goods has received a reduction in or a refund, in whole or in part, of the price paid or to be paid for the goods,

a refund, rebate or remission, as the case requires, of the whole or part of the duty may be made on application in the prescribed manner and within the prescribed time (if any).

(2) Subsection (1) does not prevent the Customs from enforcing the terms of any security given for the protection or custody of goods that are subject to the control of the Customs.

### **105. REMISSION OF DUTY ON WASTE.**

The Collector may remit any duty on goods that have been wasted or lost in sorting, bottling, packing or repacking in a warehouse.

### **106. REBATE OF DUTY ON LEAF TOBACCO.**

A rebate, as prescribed, may be made of duty payable on the importation of leaf tobacco, as an allowance in respect of waste in manufacturing operations.

*Division 4.**Release of Imported Goods for Re-export.***107. SECURITY, ETC., FOR RE-EXPORT.**

<sup>223</sup>(1) Where—

- (a) goods, the property of a person included in a prescribed class of persons, are imported; or
- (b) a person imports goods included in a prescribed class of goods or intended for a prescribed purpose, and intends to export them,

the Commissioner General may grant to the importer permission to take delivery of the goods on giving security or an undertaking, to the satisfaction of the Collector, for payment of the duty on the goods.

(2) The Regulations may prescribe provisions to be complied with in relation to goods in respect of which permission has been granted under Subsection (1).

(3)<sup>224</sup> <sup>225</sup>Where the Collector has granted permission to take delivery of goods on giving security or an undertaking referred to in Subsection (1)—

- (a) the duty is not payable if—
  - (i) the Regulations are complied with; and
  - (ii) in relation to goods for use in any industry or commercial enterprise, the goods are not available in Papua New Guinea and the Collector is satisfied that the goods, or goods of the same type, have not before been imported into Papua New Guinea by the importer; and
  - (iii) the goods are exported within a period of three months commencing on and from the date on which they are imported; and
- (b) if the security was given by way of deposit of cash or of an instrument transferable by delivery, the amount deposited or the instrument shall be returned to the person by whom the security was given.

(4) Where—

- (a) the Regulations are not complied with; or
- (b) the goods are not exported within the period of three months referred to in Subsection (3)(a),

then—

- (c) any security may be enforced according to its tenor; or

<sup>223</sup> Section 107 repealed and replaced by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s4.

<sup>224</sup> Section 107(3) repealed and replaced by *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s3.

<sup>225</sup> Section 107(3) repealed and replaced by *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s3.

- (d) where an undertaking to pay the amount of the duty has been given—the amount may be recovered at any time as a debt in a court of competent jurisdiction by proceedings in the name of the Collector.

**PART X. – DRAWBACKS.**

**108. ALLOWANCE OF DRAWBACKS.**

Drawbacks of import duty may be allowed on exportation in respect of such dutiable goods, to such amount and in such manner as is prescribed.

**109. MINIMUM VALUE OF GOODS FOR DRAWBACK.**

Drawback shall not be allowed on any goods of a less value for home consumption than the amount of the drawback.

**110. EXAMINATION OF GOODS UNDER DRAWBACK.**

All goods in respect of which a claim for drawback is made shall, before exportation, be produced for examination by the Customs.

**PART XI. – OFFICERS.*****Division 1.******Powers of Officers.******Subdivision A. – Preliminary.*****111. GENERAL POWERS OF COLLECTORS.**

In all cases not otherwise provided for in this Act, the Collector may exercise any power exercisable by the Customs.

**112. PATROLLING OF COASTS.**

An officer, and any person assisting him when on duty, may patrol, and may pass freely along and over, any part of the coast or of the shores, banks or beaches of any port, bay, harbour, lake or river.

**113. MOORING, ETC., OF CUSTOMS VESSELS.**

The officer in charge of a vessel or boat employed in the service of the Customs may—

- (a) haul the vessel or boat on any part of the coast, or the shores, banks or beaches of any port, bay, harbour, lake or river; and
- (b) moor the vessel or boat there; and
- (c) keep the vessel or boat so moored for such time as he thinks necessary.

**114. CALLING FOR AID IN SEIZURES.**

<sup>226</sup>(1) A person lawfully making any seizure under any *Customs Act* may call, in the name of the State, on any person present to assist him.

(2) Any person who fails to render assistance as required under Subsection (1) is guilty of an offence.

Penalty: <sup>227</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

***Subdivision B. – Writs of Assistance and Customs Warrants.*****115. WRITS OF ASSISTANCE.**

(1)<sup>228</sup> <sup>229</sup>On application made to him by the Commissioner General or by the Collector, a Judge may grant a writ of assistance in Form 1.

<sup>226</sup> Section 114 amended by No. 18 of 1982, Sched. 1.

<sup>227</sup> Section 114(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 114 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>228</sup> Section 115(1) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

(2) Unless superseded, a writ of assistance remains in force as long as any person named in the writ remains an officer of Customs, whether in the same capacity or not.

#### **116. GENERAL CUSTOMS WARRANTS.**

(1)<sup>230</sup> <sup>231</sup>The Commissioner General or the Collector may issue to an officer or a member of the Police Force a Customs warrant in Form 2.

(2) A Customs warrant issued under Subsection (1) remains in force until—

- (a) the expiration of the period specified in the warrant; or
- (b) the warrant is revoked,

whichever first occurs.

#### **117. SEARCHES UNDER WRITS OF ASSISTANCE OR GENERAL CUSTOMS WARRANTS.**

(1) An officer having with him a writ of assistance or a Customs warrant granted or issued under Section 115 or 116, as the case may be, or a member of the Police Force having with him such a Customs warrant—

- (a) may, at any time in the day or night, enter into and search any house, premises or place; and
- (b) may break it open; and
- (c) may search any chests, trunks or packages in which any goods may be or are supposed to be.

(2) An officer or a member of the Police Force acting under such a writ of assistance or customs warrant may take with him, and have the assistance of, any other officer or member of the Police Force and such assistants as he thinks necessary.

#### ***Subdivision C. – General Powers, etc.***

#### **118. INTERPRETATION OF SUBDIVISION C.**

<sup>232</sup>(1) For the purposes of this Subdivision—

- (a) the power of an officer to board a ship or aircraft extends to staying on board her, and the Collector may station an officer on board any ship or aircraft; and

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<sup>229</sup> Section 115(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>230</sup> Section 116(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>231</sup> Section 116(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>232</sup> Section 11Section 1188 amended by No. 18 of 1982, Sched. 1.

- (b) the power of an officer to search a ship, boat or aircraft extends to every part of any ship, boat or aircraft, and authorizes the opening of any package, locker or place and the examination of all goods; and
- (c) the power of an officer to secure any goods extends to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing, any goods or the removing of any goods to a Government warehouse.

(2) Where the Controller stations an officer on board a ship or aircraft under Subsection (1)(a), the master or pilot must provide sleeping accommodation in the cabin and suitable and sufficient food for the officer.

Penalty: <sup>233</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

### 119. BOARDING AND SEARCHING OF SHIPS, ETC.

An officer may—

- (a) board any ship, boat or aircraft; or
- (b) search any ship, boat or aircraft; or
- (c) secure any goods on any ship, boat or aircraft.

### 120. FORCING SHIPS, ETC., TO BRING TO OR LAND.

The commander or officer-in-charge of any ship, boat or aircraft in the service of the State or the Customs may, when the ship, boat or aircraft has hoisted and is carrying the proper ensign and pendant or Customs flag—

- (a)<sup>234</sup> chase any ship or aircraft that does not bring to or land at the airport when lawfully signalled or required to do so; and
- (b)<sup>235</sup> may (after having fired a gun as a signal) fire at or into the ship or aircraft to compel her to bring to or land at the airport.

### 121. HOVERING SHIPS, ETC.

<sup>236</sup>(1) An officer may require the master of a ship, or the pilot of an aircraft, that is hovering within three nautical miles of the coast or of land, to depart.

(2)<sup>237</sup> <sup>238</sup>If a ship or aircraft fails to depart within 12 hours after being required under Subsection (1) to do so, an officer may board and bring the ship or aircraft into port or airport and search her.

<sup>233</sup> Section 118(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 118 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>234</sup> Section 120(a) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>235</sup> Section 120(b) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>236</sup> Section 121 amended by No. 18 of 1982, Sched. 1.

<sup>237</sup> Section 121(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>238</sup> Section 121(2) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.



(3) The Collector may examine all persons on board a ship or aircraft boarded in accordance with this section, and any of those persons who fails—

- (a) to answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; or
- (b) to produce documents relating to the ship or aircraft and her cargo,

is guilty of an offence.

Penalty: <sup>239</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

## 122. EXAMINATIONS ETC., OF GOODS.

(1) An officer may open packages and examine, weigh, mark and seal any goods subject to the control of the Customs.

(2) The expense of the examination of any goods under Subsection (1) (including the cost of their removal to the place of examination) shall be borne by the owner.

## 123. BREAKING OF SEALS, ETC., PLACED BY OFFICERS.

<sup>240</sup>(1) A person who, except by authority, opens, alters, breaks or erases a fastening, lock, mark or seal placed by an officer on—

- (a) any goods; or
- (b) a door, hatchway, opening or place on a ship or aircraft,

whilst the goods—

- (c) on which the fastening, lock, mark or seal is placed; or
- (d) that are intended to be secured,

remain subject to the control of the Customs, is guilty of an offence.

Penalty: <sup>241</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K50,000.00.

(2) A fastening, lock, mark or seal placed by an officer on—

- (a) any goods; or
- (b) a door, hatchway, opening or place for the purpose of securing any stores,

on any ship or aircraft that—

- (c)<sup>242</sup> has arrived in any port or airport from a place outside the country; and

<sup>239</sup> Section 121(3): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 121 Subsection (3) amended by No. 13 of 2001, Sched. 1.

<sup>240</sup> Section 123 amended by No. 18 of 1982, Sched. 1.

<sup>241</sup> Section 123(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 123 Subsection (1) amended by No. 13 of 2001, Sched. 1.

(d)<sup>243</sup> is bound to any other port or airport within the country, must not be opened, altered, broken or erased, except by authority.

(3)<sup>244</sup> <sup>245</sup>If a ship or aircraft enters a port or airport with a fastening, lock, mark or seal referred to in Subsection (2) opened, altered, broken or erased contrary to that subsection, the master or pilot is guilty of an offence.

Penalty: <sup>246</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

## 124. STOPPING OF CONVEYANCES.

<sup>247</sup>(1) An officer may, on reasonable suspicion, stop and search any conveyance for the purpose of ascertaining whether any dutiable or excisable goods or any goods subject to restriction or prohibition under this Act or other Customs-related law are in it.

(2) An officer may, for the purposes of Subsection (1), direct the person in charge of the conveyance to remove it to a Customs Controlled Area, Police Station or other place to enable the search to be conducted.

(3) A person, who fails to stop, or permit a search, or remove the conveyance to a place when directed to do so under this section, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

## 125. SEIZURE OF GOODS.

(1) An officer or member of the Police Force may seize—

(a)<sup>248</sup> any goods which are forfeited or which he has reasonable cause to believe are forfeited; or

(b)<sup>249</sup> any conveyance that he has reasonable cause to believe was made use of in respect of the forfeited goods, whether at or after the time of contravention; and

(c)<sup>250</sup> anything found during the course of seizing any conveyance or goods which he has reasonable cause to believe will afford evidence of any offence against this Act or any other Customs-related law.

<sup>242</sup> Section 123(2)(c) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>243</sup> Section 123(2)(d) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>244</sup> Section 123(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>245</sup> Section 123(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>246</sup> Section 123(3): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 123 Subsection (3) amended by No. 13 of 2001, Sched. 1.

<sup>247</sup> Section 124 amended by No. 18 of 1982, Sched. 1; Section 124(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 124 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 124 Substituted by No. 10 of 2005, s. 19.

<sup>248</sup> Section 125 Subsection (1) amended by No. 10 of 2005, s. 20.

<sup>249</sup> Section 125 Subsection (1) amended by No. 10 of 2005, s. 20.

(2) All seized goods shall be taken to the nearest Government warehouse or to such other place of security as the Collector directs.

(3)<sup>251 252</sup>For the purposes of Subsection (1)(a) –

- (a) an officer may detain the goods without seizure only for so long as is necessary to determine if they are forfeited, and in any case for a detention period not exceeding five days; and
- (b) if at the expiration of the detention period a determination has not been made in relation to the status of the goods, the officer shall –
  - (i) release the goods to the owner immediately; or
  - (ii) make an application to a Magistrate to extend the detention period until such time a determination can be made; and
- (c) a Magistrate may make an order allowing for the further detention of goods for a period of time not exceeding 30 days, if the Magistrate is satisfied that the retention of the goods be continued –
  - (i) for the purposes of determining if the goods are forfeited; or
  - (ii) to allow the goods to be examined by an expert, in order to make a determination under Subparagraph (i); and
  - (iii) there has been no unavoidable delay in conducting such a determination; and
  - (iv) the applicant has demonstrated the necessity, in all the circumstances, for the goods to be detained.

## 126. NOTICE OF SEIZURE.

(1)<sup>253 254</sup>Where a conveyance or goods have been seized as forfeited, the seizing officer shall give written notice of the seizure, and of the cause of it, to the owner of the conveyance or goods, or if the owner cannot be identified after reasonable inquiry, on the person who was in possession or who was in control of the conveyance or goods when they were seized, by delivering or transmitting the notice to him –

- (a) personally; or
- (b) by post and addressed to him at his last-known place of abode or business.

(2)<sup>255 256</sup>The conveyance or goods seized–

- (a) shall be deemed to be condemned; and

<sup>250</sup> Section 125 Subsection (1) amended by No. 10 of 2005, s. 20.

<sup>251</sup> Section 125 Subsection (3) inserted by No. 10 of 2005, s. 20.

<sup>252</sup> Section 125 Subsection (3) inserted by No. 10 of 2005, s. 20.

<sup>253</sup> Section 126 Subsection (1) substituted by No. 10 of 2005, s. 21.

<sup>254</sup> Section 126 Subsection (1) substituted by No. 10 of 2005, s. 21.

<sup>255</sup> Section 126 Subsection (2) amended by No. 10 of 2005, s. 21.

<sup>256</sup> Section 126 Subsection (2) amended by No. 10 of 2005, s. 21.

(b) may be sold by the Collector, unless the person from whom it or they were seized, or the owner, gives, within one month after the date of the seizure, written notice to the Collector at the nearest port that he claims it or them.

(3) If any goods seized are of a perishable nature or are live animals, they may be sold by the Collector without delay.

(4)<sup>257</sup> <sup>258</sup>For the purposes of Subsection (1) the seizure of a conveyance or goods shall not be deemed invalid solely because of any error contained in the form of notice.

### 127. RETURN OF SEIZED GOODS ON SECURITY.

<sup>259</sup>(1) The Commissioner General or the Collector may authorize any ship, boat, aircraft or goods seized to be delivered to the claimant on his giving security.

(2) The security given to the Commissioner General or the Collector shall be in the form of cash or by bank guarantee.

(3) The amount of the security shall be an amount equal to the value of the items seized, as determined by the Commissioner General or the Collector, plus freight and insurance costs incurred in their transport to Papua New Guinea, plus the amount of any duty of customs or excise and any Goods and Services Tax payable on their importation.

(4) The question as to whether the value, determined by the Commissioner General or the Collector under Subsection (3), of items seized, is fair and accurate, is non-justiciable.

### 127A. DISPOSAL OF SEIZED GOODS ON REFUSAL TO PROVIDE SECURITY.

<sup>260</sup>(1) Where a claimant refuses to give security as required by the Commissioner General or Collector under the provisions of Section 127, in respect of any ship, boat, aircraft or goods seized, the Commissioner General may sell the ship, boat, aircraft or goods seized by public auction and shall –

- (a) set up a trust account at a bank in Papua New Guinea, into which the net proceeds of that sale, after deducting any selling expenses, shall be deposited; and
- (b) pay to the claimant the amount held in that trust account if he successfully challenges the seizure in legal proceedings commenced under the provisions of Section 129; or

<sup>257</sup> Section 126 Subsection (4) inserted by No. 10 of 2005, s. 21.

<sup>258</sup> Section 126 Subsection (4) inserted by No. 10 of 2005, s. 21.

<sup>259</sup> Section 127 amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5; Substituted by No. 17 of 2004, s. 8.

<sup>260</sup> Section 127A Inserted by No. 17 of 2004, s. 8.

- (c) if no legal proceedings for return of the ship, boat, aircraft or goods seized have been commenced by the claimant under the provisions of Section 129 within the time required by that Section, or if such legal proceedings have been commenced and are unsuccessful, the Commissioner General shall pay the amount held into the consolidated revenue of the State.

(2) Where the Commissioner General has made payment in full of the net proceeds to a claimant under the provisions of Subsection (1), that payment shall be deemed to be in full satisfaction of all claims by the claimant relating to the seizure of that ship, boat, aircraft or goods seized, including, but not limited to, any claim for damages or loss resulting from the seizure of that ship, boat, aircraft or goods seized.

(3) On payment by the Commissioner General in full of those net proceeds to a claimant, the claimant may not commence any further legal proceedings against the Commissioner General or the Collector in respect of the seizure of that ship, boat, aircraft or goods seized.

## **128. DELIVERY OF GOODS SEIZED BY PERSONS OTHER THAN CUSTOMS OFFICERS.**

All goods seized under this Act by any person other than a Customs officer shall be immediately conveyed to the nearest Customs House and there delivered to an officer.

## **129. REQUIREMENT BY COLLECTOR OF LEGAL PROCEEDINGS FOR RETURN OF SEIZED GOODS.**

(1) Where any goods have been seized by an officer and a claim to the goods has been served on the Collector by the owner, the Collector may—

- (a) retain possession of them without taking proceedings for their condemnation; and
- (b) by notice under his hand, require the claimant to take proceedings against him for the recovery of them.

(2)<sup>261</sup> <sup>262</sup>If the claimant does not commence legal proceedings for the return of the goods within 30 days after the date of the notice, they shall, without any further proceedings, be deemed to be condemned.

## **130. DISPOSAL OF FORFEITED SHIPS, ETC.**

<sup>263</sup>All forfeited ships, aircraft and goods shall be disposed of or destroyed in such manner as is prescribed or as the Commissioner General directs.

<sup>261</sup> Section 129 Subsection (2) amended by No. 10 of 2005, s. 22.

<sup>262</sup> Section 129 Subsection (2) amended by No. 10 of 2005, s. 22.

<sup>263</sup> Section 130 amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

**131. PRODUCTION OF DOCUMENTS, ETC., IN CASES OF SEIZURE.**

<sup>264</sup>(1) Where—

- (a) written information has been given on oath to the Collector that—
  - (i) goods have been unlawfully imported, exported, undervalued or entered, or illegally dealt with; or
  - (ii) it is intended to unlawfully import, export, undervalue or enter, or to illegally deal with any goods; or
- (b) any goods have been seized or detained,

the owner must, immediately on being required to do so by the Collector—

- (c) produce and hand over to him all books and documents relating to—
  - (i) the goods concerned; and
  - (ii) all other goods imported or exported by him at any time within the period of five years immediately preceding the request, seizure or detention; and
- (d) produce for the inspection of the Collector, or an officer authorized by the Collector for the purpose, all books or documents in which any entry or memorandum appears in any way relating to the goods, and allow him to make copies of or extracts from them.

Penalty: <sup>265</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(2) Where a person fails to comply with any requirement by the Collector under this section, an officer who has with him a Customs warrant issued under Subsection (3) may at any time of the day or night—

- (a) break open and enter any house, premises or place in which any books or documents relating to the goods are or are supposed to be; and
- (b) search—
  - (i) the house, premises or place; and
  - (ii) any person in or on it or them; and
  - (iii) any chests, trunks or packages in or on it or them; and
- (c) take possession of, remove and impound any such books and documents that are found.

(3) For the purposes of this section, the Collector may issue to an officer a Customs warrant in Form 3 under the Customs seal, and the warrant remains in force for one month.

<sup>264</sup> Section 131 amended by No. 18 of 1982, Sched. 1.

<sup>265</sup> Section 131(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 131 Subsection (1) amended by No. 13 of 2001, Sched. 1.

**131A. PERSON TO KEEP RECORDS.**

<sup>266</sup>(1) A person who imports or exports goods shall keep sufficient records to enable an authorised officer to inspect, audit, examine the documents, property or processes of that person to obtain or verify the information on which a determination of the amount of the duties paid, payable, deferred or relieved was made, and shall retain these records for a period of five years after the completion of the transactions, acts or operations to which they relate.

(2) This section does not require the preservation of any records –

- (a) in respect of which the Commissioner has notified the owner of the goods that their preservation is not required; or
- (b) of a company that has gone into liquidation and which has been finally dissolved.

(3) A person who causes goods to be imported or exported, or receives goods that have been imported or are to be exported, must retain all the relevant commercial documents and records that come into the owner's possession or control at any time and relate to the goods concerned or to their carriage to enable an authorised officer to inspect, audit, examine the documents, property or processes of a person to determine –

- (a) whether the person is complying with a Customs-related law; or
- (b) as to the correctness of information communicated by, or on behalf of, the person to Customs (whether in documentary or other form),

and shall retain the records for a period of five years from the time when the goods were imported into, or exported from, Papua New Guinea.

(4) A person who is required by this section to retain a commercial document or records relating to particular goods may keep the document at any place within Papua New Guinea, must keep the document in its original form and must store it in a manner that will ensure access, reliability and readability of the information recorded.

(5) A person, who –

- (a) destroys, or renders incapable of identification, a document or thing; or
- (b) renders illegible or indecipherable such document or thing; or
- (c) alters or defaces a document, other than to merely make a notation or marking on it in accordance with ordinary commercial practice; or
- (d) places or conceals on his or her body, or in any clothing worn by the person, such a document or thing,

so as to prevent it from being inspected, audited, examined, copied or seized by an authorised officer in the exercise of the officer's powers under this section, is guilty of an offence.

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<sup>266</sup> Section 131A Inserted by No. 17 of 2004, s. 9; Substituted by No. 10 of 2005, s. 23.

Penalty: Subject to Section 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00 or a term of imprisonment not exceeding one year, or both.

(6) A person who fails to keep records as specified by this Act, to make them available for inspection, audit or examination or to comply with a request to produce documents or information, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00 or a term of imprisonment not exceeding one year, or both.

(7) Without limiting the types of documents or records required to be retained, this section relates to traditional books and records, including supporting source documents produced and retained in paper format, working papers and other supporting documents whether in writing or any other form that may assist in the determination of duty or GST obligations and entitlements, and records retained in an electronically readable format that can be related back to the source documents and that are supported by a system capable of producing accessible and usable copy.

(8) A person who keeps documents or records whether in writing or any other form in accordance with this section –

- (a) is not relieved of any of the record keeping, readability, retention, and access responsibilities only because he contracts out the record keeping function to a third party including a book keeper, accountant, service bureau or other such arrangements; and
- (b) shall ensure that the requirements for record keeping, readability, retention, and access are continued to be met in the event of third party changes such as software and/or hardware conversions and upgrades, bankruptcy or migration to/from a third party; and
- (c) is responsible for keeping the records and for providing access to authorised persons.

### **131B. AUTHORISED OFFICER MAY REQUIRE PERSON TO PRODUCE DOCUMENTS.**

<sup>267</sup>(1) Where a person required to keep records under Section 131A fails to comply with any of the provisions of that section, an authorised officer may, by notice in writing, require the person to furnish him with such information as he may require within a period specified in the notice –

- (a) where the document is in writing, the document; or
- (b) where the information is stored in magnetic tapes or computer disks or other information or storage devices, a production of the information in a document setting out the information in a form the authorised officer can understand.

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<sup>267</sup> Section 131B Inserted by No. 17 of 2004, s. 9; Substituted by No. 10 of 2005, s. 23.



(2) A person, who fails to produce any information following a requirement made to him under Subsection (1), is guilty of an offence.

Penalty: A fine of not less than K5,000.00 or imprisonment for a period not exceeding one year.

(3) The period that may be specified in a notice given under Subsection (1) shall be not less than 14 days after the notice is given but may be extended for up to an additional 14 days by the Commissioner upon request.

### **131C. ACCESS, ETC., TO BOOKS, ETC.**

<sup>268</sup>(1) Subject to this section, an authorised officer, shall at all times have full and free access to all buildings, places, computers, books, documents, records, papers and other information storage devices for any of the purposes of this Act, and for that purpose may inspect, audit, examine the documents, property or processes of a person that may be relevant in determining the obligations of that or any other person, or to ensure compliance of that or any other person with the Act, and, in so doing the officer may seize, retain and remove for inspection or make extracts from or copies of any such computer, book, documentary or paper records.

(2) A person, who, on demand, fails to make available to an authorised officer any documents or records necessary for that officer to conduct an inspection, audit or examination at a premises, is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine not exceeding K5,000.00.

(3) An authorised officer may request a person with knowledge of a computer or a computer system to assist access by providing any information or assistance that is reasonable to allow the officer to do one or more of the following: –

- (a) access the data held in, or accessible from, a computer that is on the audit premises;
- (b) copy the data to a data storage device; and
- (c) convert the data into documentary form,

and, for the purposes of this Subsection, “accessible data” includes data held on premises other than the audit premises, but that can be accessed via a computer on the audit premises.

(4) A person who fails to provide such information or assistance to an authorised officer in accordance with Subsection (3), is guilty of an offence.

Penalty: Subject to Section 163, 164 and 165, a fine not exceeding K5,000.00.

(5) An officer is not entitled to remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner of Customs stating that the officer is authorised to exercise powers under this section.

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<sup>268</sup> Section 131C Inserted by No. 17 of 2004, s. 9; Substituted by No. 10 of 2005, s. 23.

(6) The occupier of a building or place entered or proposed to be entered by an authorised officer under Subsection (1), shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

(7) A person, who contravenes Subsection (6), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine not exceeding K5,000.00.

### **131D. CERTIFIED COPIES OF DOCUMENTS.**

<sup>269</sup>(1) Where, in accordance with the requirement of any law or with ordinary commercial practice, a document that would be required to be kept in accordance with Section 131A is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if a true copy of the document, certified in accordance with Subsection (2), is kept in its stead.

(2) For the purposes of Subsection (1) a person must make and retain a true copy of that document and attach to the copy a certificate, signed by that person, stating that –

- (a) the copy is a true copy of the original document, together with the time and date the copy was made and name of the person making the copy; and
- (b) the name of the department or organisation that the original document has been surrendered to; and
- (c) particulars of the reason for that surrender, the time and date of the surrender and the name of the person surrendering the document,

and the certified copy shall be treated by the Commissioner of Customs or an authorised officer, and shall be admissible in all courts, as if it were the original document.

### **132. IMPOUNDING OF DOCUMENTS.**

(1) The Collector may impound or retain any document that is–

- (a) presented in connection with any entry; or
- (b) required to be produced under this Act,

and the person otherwise entitled to the document is entitled, in place of it, to a copy certified as correct by the Collector.

(2) A certified copy referred to in Subsection (1) shall be received in all courts as evidence, and as of equal validity with the original.

### **133. FURTHER PROOF OF PROPER ENTRY.**

(1) The Collector may require from the owner of any goods proof, by declaration or the production of documents, that the goods–

<sup>269</sup> Section 131D Inserted by No. 10 of 2005, s. 23.

- (a) are owned as claimed; and
- (b) are properly described, valued or rated for duty.

(2)<sup>270</sup> <sup>271</sup>The Collector may withhold from the owner the assessment of an entry and refuse the release of goods for home consumption pending receipt of proof, to the satisfaction of the Collector, required under Subsection (1).

#### **134. TRANSLATION OF FOREIGN DOCUMENTS.**

If a document in a foreign language is presented to an officer for any purpose connected with Customs business, the Collector may require an English translation—

- (a) to be supplied at the expense of the owner by such person as the Collector approves; or
- (b) to be verified as the Collector requires.

#### **135. CUSTOMS SAMPLES.**

Samples of any goods under the control of the Customs may, for any purpose thought necessary by the Collector, be taken, utilized and disposed of by an officer in the prescribed manner.

#### *Subdivision D. – Powers of Arrest, etc.*

#### **136. POWER TO QUESTION.**

<sup>272</sup>(1) An officer may, other than in accordance with any other provision of this Act, question any person to determine whether that person, or any other person is complying with this Act or any other Custom-related law, and the person must answer questions put to him truthfully and to the best of his knowledge or belief.

(2) A person, who fails to answer questions put to him under this section or provides false or misleading answers, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(3) Notwithstanding Subsections (1) and (2), a person is not bound to answer questions put to him if the answers would tend to incriminate him.

#### **137. DETENTION AND SEARCH OF SUSPECTS.**

(1) If an officer or a member of the Police Force has reasonable cause to suspect that a person—

- (a) is unlawfully carrying any goods subject to the control of the Customs, or any prohibited imports or prohibited exports; or

<sup>270</sup> Section 133 Subsection (2) substituted by No. 10 of 2005, s. 24.

<sup>271</sup> Section 133 Subsection (2) substituted by No. 10 of 2005, s. 24.

<sup>272</sup> Section 136 Substituted by No. 10 of 2005, s. 25.

(b) has any such goods secreted about him,

he may detain and, subject to Subsections (2) and (3), search him.

(2) Before the suspected person is searched, he may demand to be taken before a magistrate or the Collector, who may—

(a) order him to be searched; or

(b) discharge him without a search.

(3) Females shall be searched only by a female searcher appointed by the magistrate or the Collector.

### 138. ARREST OF PERSONS SUSPECTED OF SMUGGLING, ETC.

<sup>273</sup>(1) An officer may arrest without warrant any person who he believes on reasonable grounds –

(a) is committing or has committed an offence against a Customs-related law; and

(b) that proceedings against the person by summons would not be effective.

(2) A person, who, physically or otherwise, does or attempts to resist, interfere with, hinder or prevent the arrest of any person under Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K15,000.00, or imprisonment for a period not exceeding six months.

(3) An officer who arrests a person for an offence against a Customs-related law, or who is present at such an arrest, may conduct a search of the arrested person at the time of arrest or soon after, and seize –

(a) any evidential material in relation to that or another offence against the Customs-related law; and

(b) any seizable item; and

(c) any weapons or other things capable of being used to inflict bodily harm or help the person escape,

found as a result of the search.

(4) A person arrested may be detained until such time as he can, without undue delay, be taken before a magistrate.

(5) A magistrate before whom a person is brought under Subsection (4) may –

(a) commit the person to custody until he can be brought before a court to be dealt with according to law; or

<sup>273</sup> Section 138 amended by No. 18 of 1982, Sched. 1; Section 138(2): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 138 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 138 Substituted by No. 10 of 2005, s. 26.

- (b) admit him to bail on his giving sufficient security for his appearance before a court at the time and place appointed for the hearing of the charges laid against him.

*Division 2.*

*Protection of Officers.*

**139. REASONABLE CAUSE FOR SEIZURE AS BAR TO ACTION.**

(1) A person is not liable for a seizure under this Act for which there was reasonable cause.

(2) If a person recovers any ship, aircraft or goods seized under this Act, or any proceeds of the sale of such a ship, aircraft or goods, and at the same time reasonable cause for the seizure is found, the finding bars proceedings against any person concerned in the seizure.

**140. NOTICE OF PROCEEDINGS AGAINST OFFICERS.**

(1) Subject to Subsection (5), proceedings shall not be commenced against an officer for anything done in execution of his office, or by reason of his office, until one month after written notice is delivered to him, or is left at his usual place of abode, by the plaintiff, his attorney or agent.

(2) A notice under Subsection (1) shall state clearly—

- (a) the cause and nature of the proceedings; and
- (b) the court in which it is intended to take the proceedings; and
- (c) the name and place of abode of the plaintiff; and
- (d) if the notice is delivered by the attorney or agent of the plaintiff—the name and place of business of the attorney or agent.

(3) A notice under Subsection (1) is not invalid by reason of any defect or inaccuracy in it unless the court is of the opinion that the defect or inaccuracy would prejudice the defendant in his defence.

(4) In a case to which Subsection (3) applies, the court may give leave to amend the notice as it thinks just.

(5) This section does not apply where a Judge gives leave to the plaintiff to proceed without notice.

(6) Leave under Subsection (5) may be given on such terms as the Judge thinks proper.

**141. EVIDENCE IN PROCEEDINGS ON NOTICE.**

In any proceedings taken on notice under Section 140(1), the plaintiff—

- (a) shall not advance evidence of any cause of action that was not distinctly stated in the notice; and

- (b) is not entitled to a verdict unless he proves on the trial that the notice was duly served.

**142. TENDER OF AMENDS.**

(1) An officer to whom notice has been given under Section 140(1) may, within one month after the notice is given, offer amends to the plaintiff or to his attorney or agent.

(2) If an offer of amends is not accepted, then the defendant may plead the offer in defence, alone or with other defences.

(3) If amends offered in accordance with Subsection (1) are found to be sufficient—

- (a) costs shall not be recovered against the defendant; and
- (b) if the defendant brought the amount of the amends into court when entering his defence, he is entitled to costs.

**143. PROCEEDINGS GENERALLY.**

Subject to Section 144, proceedings of a kind referred to in Section 140 against an officer shall be commenced within six months after the cause of the proceedings arose, and the defendant is entitled to plead the general issue and to give any special matter in evidence.

**144. PROCEEDINGS IN CASE OF PROPOSED TARIFF.**

(1) Subject to Subsection (2), proceedings, whether against an officer or otherwise, for anything done for the protection of the public revenue in relation to any tariff or tariff alteration proposed in the Parliament shall not be commenced before the close of the meeting of the Parliament in which the tariff or tariff alteration is proposed.

(2) On the application of a person who wishes to commence against an officer any proceedings referred to in Subsection (1), the National Court—

- (a) may require the officer to give security, to the satisfaction of the Court, to abide the result of the proceeding; and
- (b) in default of the giving of such security, may permit the immediate commencement of the proceeding.

## PART XII. – PENAL PROVISIONS.

*Division 1.**Forfeitures.***145. FORFEITED SHIPS AND AIRCRAFT.**

<sup>274</sup>(1) The following ships or boats, not exceeding 250 tons registered tonnage, and the following aircraft are forfeit to the State:–

- (a) any ship, boat or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation or conveyance of any prohibited imports or prohibited exports;
- (b)<sup>275</sup> any ship, boat or aircraft, found within three nautical miles of the coast or of land, that fails to bring to or to land at an airport, for boarding on being lawfully required to do so;
- (c) any ship, boat or aircraft hovering within three nautical miles of the coast or of land and not departing within 12 hours after being required to depart by an officer;
- (d) any ship, boat or aircraft from which goods are thrown overboard, staved or destroyed to prevent seizure by the Customs;
- (e)<sup>276</sup> any ship, boat or aircraft that is found within any port or airport with cargo on board and afterwards found–
  - (i) light or in ballast; or
  - (ii) with the cargo deficient,

the master or pilot of which is unable to account lawfully for the difference;

- (f) any ship, boat or aircraft within three nautical miles of the coast or of land that has–
  - (i) false bulkheads, bows, sides or bottoms; or
  - (ii) a secret or disguised place adapted for the purpose of concealing goods; or
  - (iii) a hole, pipe or other device adapted for the purpose of running goods.

(2)<sup>277</sup> <sup>278</sup>The owner of a ship exceeding 250 tons registered tonnage that would be forfeit if the ship did not exceed 250 tons registered tonnage is liable, subject to

<sup>274</sup> Section 145 amended by No. 18 of 1982, Sched. 1.

<sup>275</sup> Section 145(1)(b) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>276</sup> Section 145(2)(e) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

<sup>277</sup> Section 145 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 145(2) amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

<sup>278</sup> Section 145 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 145(2) amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

Sections 163, 164 and 165, to a penalty of a fine not exceeding K100,000.00, and the ship may be detained until—

- (a) the penalty is paid; or
- (b) security is given for its payment.

#### 146. FORFEITED GOODS.

<sup>279</sup>(1) The following goods shall be forfeited to the State:—

- (a) all goods that are smuggled or unlawfully imported, exported or conveyed;
- (b) all prohibited imports;
- (c) all goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted, and the conditions or requirements of the necessary licence or permission has not been complied with;
- (ca)<sup>280</sup> all goods which are counterfeit trademark goods or are pirated copyright goods or goods infringing intellectual property right or protection defeating devices; and
- (d)<sup>281</sup> all goods imported or exported in any conveyance in which goods are prohibited to be imported or exported;
- (e)<sup>282</sup> all dutiable goods found on any conveyance that is unlawfully in any place; and
- (f)<sup>283</sup> all goods found on any conveyance after arrival in a port or at an airport or a port of entry that are not specified or referred to in the cargo report made under Section 30 and not being baggage belonging to the crew or passengers and that are not satisfactorily accounted for;
- (g) all goods in respect of which bulk is unlawfully broken;
- (h) all goods subject to the control of the Customs that are moved, altered or interfered with otherwise than by authority and in accordance with this Act;
- (i) all goods that, by this Act, are required to be moved or dealt with in any way and that are not moved or dealt with accordingly;
- (j) all goods in respect or which any entry, invoice, declaration, answer, statement or representation that is false or wilfully misleading in any particular has been delivered, made or produced;

<sup>279</sup> Section 146 repealed and replaced by *Customs (Amendment) Act 1998* (No. 5 of 1998), s2.

<sup>280</sup> Section 146 Subsection (1) amended by No. 10 of 2005, s. 27.

<sup>281</sup> Section 146 Subsection (1) amended by No. 10 of 2005, s. 27.

<sup>282</sup> Section 146 Subsection (1) amended by No. 10 of 2005, s. 27.

<sup>283</sup> Section 146 Subsection (1) amended by No. 10 of 2005, s. 27.



- (j<sup>a</sup>)<sup>284</sup> all goods that in accordance with any section of this Act are deemed to have been abandoned; and
- (k) any carriage or animal used in smuggling or in the unlawful importation, exportation or conveyance of any goods;
- (l) the cargo of any ship, boat or aircraft that hovers about the coast or land and does not depart within 12 hours after being required by an officer to do so;
- (m) all goods, not being passengers' baggage, found on any ship or aircraft after clearance, that are not—
- (i) specified or referred to in the outward manifest; or
  - (ii) accounted for to the satisfaction of the Collector;
- (n) all prohibited exports that are—
- (i) put on any ship, boat or aircraft for export; or
  - (ii) brought on any wharf or place for the purpose of export;
- (o) all dutiable goods that are concealed in any manner;
- (p) any package in which there are concealed goods—
- (i) not enumerated in the entry; or
  - (ii) so packed as to deceive the officer;
- (q) all dutiable goods found in the possession of, or in the baggage of, any person who has got out of, landed from or gone on board any ship, boat or aircraft and who—
- (i) has denied that he has any dutiable goods in his possession; or
  - (ii) when questioned by an officer, has not fully disclosed that the goods are in his possession or in his baggage;
- (r) all goods offered for sale on the pretence that they are prohibited or smuggled goods;
- (s) all packages in which forfeited goods are contained;
- (t) all goods packaged or contained in forfeited packages.

(2)<sup>285</sup> <sup>286</sup>Notwithstanding the provisions of Section 145, this section applies in relation to conveyance as well as other goods.

(3)<sup>287</sup> <sup>288</sup>Goods which are forfeited under this section shall not be deemed otherwise merely because they have been released from Customs control as a result of a Customs process.

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<sup>284</sup> Section 146 Subsection (1) amended by No. 10 of 2005, s. 27.

<sup>285</sup> Section 146 Subsection (2) amended by No. 10 of 2005, s. 27.

<sup>286</sup> Section 146 Subsection (2) amended by No. 10 of 2005, s. 27.

<sup>287</sup> Section 146 Subsection (3) inserted by No. 10 of 2005, s. 27.

<sup>288</sup> Section 146 Subsection (3) inserted by No. 10 of 2005, s. 27.

**147. CONDEMNATION ON CERTAIN CONVICTIONS.**

Where the commission of any offence causes a forfeiture of any goods, the conviction of any person for the offence has effect as a condemnation of the goods in respect of which the offence is committed.

***Division 1A.******Administrative Penalties.*****147A. INTERPRETATION.**

<sup>289</sup>In this Division, unless the contrary intention appears –

“**materially incorrect**” means that the entry contains an error or omission in relation to any of the following matters: –

- (a)<sup>290</sup> the identity and full address of the overseas supplier;
- (b)<sup>291</sup> the identity and full address of the importer or exporter;
- (c)<sup>292</sup> the identity and full address of the person making the entry;
- (d) the identification of the importing or exporting vessel, aircraft or vehicle and its voyage or registration number;
- (e) the bill of lading, air way bill, or container identification details;
- (f) the Supplier’s invoice number;
- (g) the customs general orders;
- (h) the tariff item which the goods are classified under the *Customs Tariff Act 1990*;
- (i) a customs agent’s code number;
- (j) the statistical quantity of the goods;
- (k) the exchange rate for the currency in which the goods are traded;
- (l) the value for duty expressed in the currency in which the goods are traded;
- (m) the value for duty expressed in Papua New Guinea Kina;
- (n) the country of origin or destination of the goods;
- (o) the country from which the goods have been exported from;
- (p) the amount paid or payable to transport the goods to PNG from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country;

<sup>289</sup> Section 147A of Part XII Inserted by No. 27 of 2003, s. 5.

<sup>290</sup> Section 147A Amended by No. 10 of 2005, s. 28.

<sup>291</sup> Section 147A Amended by No. 10 of 2005, s. 28.

<sup>292</sup> Section 147A Amended by No. 10 of 2005, s. 28.

- (q) the insurance costs associated with importation of the goods, including of any insurance costs in the country of exportation;
- (r) the particulars of shipping containers, packages or break bulk including marks and numbers.
- (s)<sup>293</sup> the Customs Procedure Code.

<sup>294</sup>“**Technical offence**” means a breach of the Act or Regulations in respect of any obligation for a person to –

- (a) communicate information to Customs; or
- (b) deal with goods in accordance with the Act; or
- (c) deal with a conveyance in accordance with the Act; or
- (d) keep, retain or produce documents or records; or
- (e) comply with any term or condition of a licence issued under this Act; or
- (f) allow or permit unauthorised entry to a Customs Controlled Area; or
- (g) answer questions or make any statement to a Customs office,

and includes a breach by a person arriving in Papua New Guinea who is required to make a statement to Customs by virtue of the *Customs (Personal Effects) Regulation 1995*.

#### 147B. ADMINISTRATIVE PENALTIES.

<sup>295</sup>(1)<sup>296</sup> <sup>297</sup>Subject to Section 147C, where the Commissioner General is satisfied that an entry of goods pursuant to Section 35 of the Act contains an error or omission and that as a result –

- (a) the amount of duty payable under the Act has not been paid or declared for payment or would not have been paid or declared for payment; or
- (b) the entry is otherwise materially incorrect,

the Commissioner General may, within 5 years after the entry was made, by notice in writing, require the owner or agent of the goods or pay within 30 days after service of the notice, penalty of an amount of not less than 50 percent and not exceeding 200 percent of the duty unpaid, not declared or attempted to be avoided or where the goods are exempt, free or zero rated from duty then a penalty of not more than 5 percent of the value of the goods or, where the entry is otherwise materially incorrect, a penalty of not more than 5 percent of the value of the goods.

<sup>293</sup> Section 147A Amended by No. 10 of 2005, s. 28.

<sup>294</sup> Section 147A Amended by No. 10 of 2005, s. 28.

<sup>295</sup> Section 147B of Part XII Inserted by No. 27 of 2003, s. 5.

<sup>296</sup> Section 147B Subsection (1) substituted by No. 17 of 2004, s. 10; Subsection (1) substituted by No. 10 of 2005, s. 29.

<sup>297</sup> Section 147B Subsection (1) substituted by No. 17 of 2004, s. 10; Subsection (1) substituted by No. 10 of 2005, s. 29.

(2) The notice under Subsection (1) may be served on the owner of the goods or his agent.

(3) Where the Commissioner General serves a notice under Subsection (2) in relation to a statement made, or omission from a statement made, by a person, proceedings may also be instituted under Section 153 against that person in relation to that statement or omission.

(4) For the purposes of Subsection (1), any document presented to Customs in respect of any goods under the control of Customs is to be treated as a statement made to an officer.

(5) If an amount required to be paid in accordance with Subsection (1) is not paid, it becomes, upon the expiration of that period, a debt due to the State and may be recovered in a court of competent jurisdiction.

(6) Where a person, in respect of whom a demand for payment of penalty in respect of any particular goods has been made under Subsection (1), makes an application under Section 177 or 178 for review of the decision as to the amount of duty payable on those goods –

- (a) the period commencing on the making of that application and ending on the final determination of the amount of duty by the Commissioner General or by a Court on appeal from the decision of the Commissioner General shall not be taken into account in computing the period of 30 days referred to in Subsection (1) and (5); and
- (b) if it is determined that the duty or any part of the duty demanded in respect of those goods is not payable, the demand for penalty shall be treated as if it were a demand for such amount as would be appropriate under Subsection (1) having regard to the determination of the Commissioner General.

#### **147C. SECTION 147B TO APPLY IN CERTAIN CASES.**

<sup>298</sup>(1) Where the owner of goods or his agent is uncertain whether particular information included in a statement made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, by writing included in the statement, nominate that information as information of which the owner or agent is uncertain and set out the reasons for that uncertainty, and, where the owner or agent does so to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that information.

(2) Where the owner of goods or the agent of the owner is uncertain whether, by reason of the omission of particular information from a statement made in respect of those goods, that statement might be regarded as misleading in a material particular, that owner or his agent may, by writing included in the statement, specify

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<sup>298</sup> Section 147C of Part XII Inserted by No. 27 of 2003, s. 5; Section 147C Subsection (1) amended by No. 17 of 2004, s. 11; Section 147C Subsection (5) inserted by No. 17 of 2004, s. 11; Section 147C Substituted by No. 10 of 2005, s. 30.

the information that has been omitted and set out the reasons for uncertainty concerning the effect of the omission and where the owner or agent does so to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that omission.

#### **147D. PENALTY FOR TECHNICAL OFFENCES.**

<sup>299</sup>(1) Where a person has committed a technical offence against this Act, the Commissioner-General may, by notice in writing within 14 days of the alleged breach being detected, require that person to pay within 30 days after service of the notice, a penalty as prescribed.

(2) Subject to this section, a person on whom a notice of a penalty has been served under Subsection (1) and payment of which remains outstanding after the completion of the 30 day period, shall pay, in addition to the penalty, interest at the rate of 8% of the amount of unpaid penalty for each 5 day period or part thereof, beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full.

(3) Where the Commission-General serves a notice under Subsection (1) in relation to a technical offence, a customs prosecution in respect of that offence may only be commenced if the penalty remains unpaid 30 days after payment was due, and the Court may take account of any unpaid penalty and interest accrued when imposing a penalty in respect of such action.

#### **147E. POWER TO IMPOSE ADMINISTRATIVE PENALTIES EXTENDS TO TRAVELLERS..**

<sup>300</sup>(1) Where an officer is satisfied that a person arriving in or departing from Papua New Guinea has committed a technical offence against this Act resulting in duty or GST being short-paid, the officer, in place of the penalty provisions outlined under Section 147D, may –

- (a) if the goods were found in the course of a search of the baggage of a person, issue that person with a penalty notice for an amount equal to the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade; or
- (b) if the goods found were concealed in any manner likely to have deceived the officer, issue that person with a penalty notice for an amount equal to twice the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade.

(2) An penalty charged under Subsection (1) is in addition to any duty or GST payable on the goods.

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<sup>299</sup> Section 147D of Part XII Inserted by No. 27 of 2003, s. 5; Section 147D Subsection (3) inserted by No. 17 of 2004, s. 12; Section 147D Substituted by No. 10 of 2005, s. 30.

<sup>300</sup> Section 147E Inserted by No. 10 of 2005, s. 30.

(3) An officer may detain any goods subject to Subsection (1) until such time as the penalty and any short-paid duty or GST is paid in full, whereupon the goods may be released to the owner in accordance with any provision of this Act.

(4) Notwithstanding the provisions of Section 147D(2), where a person does not fully pay the penalty and any paid short-paid duty or GST within 30 days after service of the penalty notice, the goods are taken to be forfeited goods.

(5) A reference in this section to the baggage of a person who has arrived in Papua New Guinea shall be read as including a reference to goods on his person or otherwise with him.

(6) This section does not apply to prohibited imports or exports.

#### **147F. REMISSION OF PENALTIES.**

<sup>301</sup>(1) Where a penalty is payable under this Division, the Commissioner-General may, on the basis of a written application, remit the whole or any part of the penalty.

(2) For the purposes of Subsection (1), an application for remission of a penalty –

- (a) must be made by the person liable to pay the penalty; and
- (b) must be made within 30 days from the date of service of the penalty notice for which the application is made; and
- (c) may only be made after payment of the penalty;

and failure to comply with these conditions are grounds for the application to be dismissed.

(3) The Commissioner-General shall inform the applicant of his decision in relation to the application within 30 days after receiving an application for remission of penalty.

(4) In considering to remit the whole or a part of an administrative penalty referred to in this Division, the Commissioner-General may have regard to the following matters: –

- (a) whether the applicant or his agent, as the case may be, has voluntarily admitted that a statement or omission, is false or misleading;
- (b) the risk to revenue occasioned by such a statement or omission or act or conduct;
- (c) the capacity of the applicant or his agent to have avoided making such statement or omission or engage in such an act or conduct, as the case may be, and the extent to which that capacity was exercised; and

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<sup>301</sup> Section 147F Inserted by No. 10 of 2005, s. 30.

- (d) the history of the applicant or his agent resulting in previous revenue loss or any Customs prosecution instituted against the applicant or his agent.

**147G. DISPUTES AS TO THE APPLICATION OF THIS DIVISION.**

<sup>302</sup>(1) Where a person who has been issued a notice of penalty disputes the decision of the Commissioner-General made under Section 147F, that person may make an application under Sections 177 or 178 for a review of the decision.

(2) Notwithstanding the general provisions of Section 177 and 178, an application in respect of an administrative penalty, issued under this Division, may only be made if the applicant has first exhausted a claim for remittance under Section 147F.

(3) Where a decision of the Commissioner-General under Section 177 or Section 178 results in the penalty being remitted in part or in whole, the Commissioner-General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Commissioner-General.

(4) Nothing in this Division affects the right of a person to appeal any decision of the Commissioner-General to the National Court.

(5) Where a person makes an application to the National Court for a review of a decision made under this Division –

- (a) the period commencing on the making of that application and ending on the final determination by a Court on appeal from the decision of the Commissioner-General, shall not be taken into account in computing the time periods referred to in this division; and
- (b) where a decision of a Court on an appeal results in the penalty amount being remitted in part or whole, the Commissioner-General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Commissioner-General or of the Court.

***Division 2.***

***Offences.***

**148. ASSEMBLIES FOR SMUGGLING, PREVENTION OF SEIZURES, ETC.**

(1) If two or more persons are assembled for the purpose of–

- (a) importing prohibited imports; or
- (b) smuggling; or
- (c) preventing the seizure of, or rescuing after seizure, any prohibited imports or smuggled goods,

each of them is guilty of an offence.

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<sup>302</sup> Section 147G Inserted by No. 10 of 2005, s. 30.

Penalty: If the offence is committed in relation to goods other than narcotic drugs—subject to Section 164, imprisonment for a period not exceeding two years.

If the offence is committed in relation to goods that are narcotic drugs—as provided by Section 160.

(2) So far as it relates to prohibited imports, this section applies to all prohibited imports that are narcotic drugs.

(3) An offence against this section committed in relation to goods other than narcotic drugs is punishable on summary conviction.

#### 149. SMUGGLING.

<sup>303</sup>(1) A person, who smuggles or attempts to smuggle any goods into Papua New Guinea, whether clandestinely or not, is guilty of an offence.

(2) A person, who conveys or has in his possession any smuggled goods, is guilty of an offence.

(3) A person who conveys or has in his possession any smuggled goods shall be deemed to convey them, or have them in his possession, as the case may be, unlawfully.

(4) Merchandise on board a ship or aircraft calling at any port or airport in the country but intended for, and consigned to, a port, airport or place outside the country shall not be deemed to be unlawfully imported into the country if the goods –

- (a) are specified on the ship's or aircraft's manifest; and
- (b) are not transhipped or landed in the country, or are transhipped or landed by authority.

(5) The penalty for a breach of Subsections (1),(2) or (3) –

- (a) subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and K50,000.00 or imprisonment for a period not exceeding 10 years, or both; or
- (b) if the offence is committed in relation to goods that are narcotic drugs – as provided by Section 160.

#### 150. USE OF CONVEYANCE FOR SMUGGLING.

<sup>304</sup>The owner of a conveyance, who uses it or knowingly permits it to be used in smuggling, to convey smuggled goods or to enable any contravention of Customs-related law by any person, is guilty of an offence.

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<sup>303</sup> Section 149(1) amended by No. 18 of 1982, Sched. 1; Section 149(1): penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 149 Subsection (1) amended by No. 13 of 2001, Sched. 1; Section 149(3) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3; Section 149 Substituted by No. 10 of 2005, s. 31.



- Penalty: (a) subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both; or
- (b) if the offence is committed in relation to goods that are narcotic drugs – as provided by Section 160

### 151. OFFENCES IN RELATION TO NARCOTIC DRUGS.

- (1) This section applies to prohibited imports that are narcotic drugs.
- (2) A person who—
- (a) without reasonable excuse (proof of which is on him), has in his possession on board a ship or aircraft any prohibited imports to which this section applies; or
- (b) imports or attempts to import any prohibited imports to which this section applies; or
- (c) without reasonable excuse (proof of which is on him), has in his possession any prohibited imports to which this section applies that have been imported into the country in contravention of this Act; or
- (d) aids, abets, counsels or procures, or is in any way knowingly concerned in, the importation into the country of any prohibited imports to which this section applies; or
- (e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation, or intended importation, into the country of any prohibited imports to which this section applies,

is guilty of an offence.

Penalty: As provided by Section 160.

- (3) On the prosecution of a person for an offence against Subsection (2)(c)—
- (a) it is not necessary for the prosecution to prove that the person knew that the goods in his possession had been imported into the country in contravention of this Act; and
- (b) it is a defence if the person proves that he did not know that the goods in his possession had been imported into the country in contravention of this Act.

### 152. UNAUTHORIZED ENTRY ON SHIPS, AIRCRAFT, ETC.

<sup>305</sup>(1)<sup>306</sup> <sup>307</sup>In this section, “**tarmac of an airport**” includes—

<sup>304</sup> Section 150 amended by No. 18 of 1982, Sched. 1; Section 150: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 150 Amended by No. 13 of 2001, Sched. 1; Section 150 Substituted by No. 10 of 2005, s. 31.

<sup>305</sup> Section 152 amended by No. 18 of 1982, Sched. 1.

<sup>306</sup> Section 152(1) amended by *Customs (Amendment) Act* 1998 (No. 5 of 1998), s3.

- (a)<sup>308</sup> that part of the airport set aside for, or used in any particular case for, the taxiing or standing of an aircraft or the embarkation or disembarkation of passengers; and
- (b) any area used for movement of passengers between the aircraft and the embarkation or reception point,

other than any area set aside for visitors to the airport.

(2) A person who, except by authority—

- (a) enters on or is in a place of examination in or at which goods that are the personal baggage of passengers disembarking from, or embarking on, a ship or aircraft are being examined for the purposes of this Act; or
- (b) enters or is in or on—
  - (i) a ship; or
  - (ii) an aircraft; or
  - (iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed,

at a time when goods that are the personal baggage of passengers disembarking from, or embarking on, the ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf; or

- (c)<sup>309</sup> enters or is on any part of the tarmac of an airport while passengers are embarking on, or disembarking from, an aircraft,

is guilty of an offence.

Penalty: <sup>310</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(3)<sup>311</sup> <sup>312</sup>Subsection (2) does not prohibit a person who—

- (a)<sup>313</sup> has, or is a member of an authority that has, the management or control of a wharf or airport; or
- (b)<sup>314</sup> is employed in connection with the management or control of a wharf or airport,

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf, or the tarmac of an airport, for the purposes of such management or control.

<sup>307</sup> Section 152(1) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>308</sup> Section 152(1)(a) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>309</sup> Section 152(2)(c) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>310</sup> Section 152(2): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 152 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>311</sup> Section 152(3) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>312</sup> Section 152(3) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>313</sup> Section 152(3)(a) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>314</sup> Section 152(3)(b) amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

**153. MISCELLANEOUS OFFENCES.**

<sup>315</sup>A person who—

- (a) evades any duty that is payable; or
- (b) obtains any drawback that is not payable; or
- (c) obtains any refund, rebate or remission of duty that is not payable; or
- (d) prepares, passes or presents a document purporting to be a genuine invoice that is not in fact a genuine invoice; or
- (e) makes an entry that is false in any particular; or
- (f) makes in a declaration or document produced to an officer a statement that is untrue in any particular; or
- (g) produces or delivers to an officer a declaration or document containing a statement that is untrue in any particular; or
- (h) misleads any officer in any particular likely to affect the discharge of his duty; or
- (i) refuses or fails to answer questions or to produce documents; or
- (j) sells or offers for sale any goods on the pretence that the goods are prohibited imports or smuggled goods,

is guilty of an offence.

Penalty: <sup>316</sup>Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

**154. BRIBERY OF OFFICERS, UNDUE INFLUENCE, ETC.**

A person who—

- (a) gives or procures to be given, or offers or promises to give or procure to be given, any bribe, recompense or reward to an officer to induce him to neglect his duty; or
- (b) makes a collusive agreement with an officer to induce him to neglect his duty; or
- (c) attempts by threats, demands or promises to influence an officer in the discharge of his duty,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

<sup>315</sup> Section 153 amended by No. 18 of 1982, Sched. 1.

<sup>316</sup> Section 153: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 153 Amended by No. 13 of 2001, Sched. 1.

**155. ASSAULTING, RESISTING, OBSTRUCTING, ETC., OFFICERS.**

A person who—

- (a) assaults; or
- (b) by force, resists, molests or obstructs; or
- (c) endeavours to intimidate,

an officer in the execution of his duty, or any person acting in the aid or assistance of an officer in the execution of his duty, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

**156. RESCUING SEIZED GOODS, ETC.**

A person who—

- (a) rescues any goods that have been seized; or
- (b) before or at or after any seizure, staves, breaks or destroys any goods, or documents relating to any goods, to prevent—
  - (i) the seizure or the securing of the goods; or
  - (ii) the proof of an offence,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

**157. COLLUSION AND SIMILAR OFFENCES BY OFFICERS, ETC.**

An officer or a member of the Police force who—

- (a) makes a collusive seizure; or
- (b) delivers up, or makes an agreement to deliver up or not to seize, any ship, boat, carriage, aircraft or goods liable to forfeiture; or
- (c) conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation of, any goods for the purposes of—
  - (i) seizing any ship, boat, carriage, aircraft or goods; and
  - (ii) obtaining a reward for the seizure,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

**158. UNAUTHORIZED OPENING OF WAREHOUSE.**

<sup>317</sup>A person who, otherwise than by authority, opens a warehouse or gains access to the goods in the warehouse is guilty of an offence.

Penalty: <sup>318</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

**159. UNLAWFUL IMPORTATION OR POSSESSION OF BLANK INVOICES.**

<sup>319</sup>A person who, without reasonable excuse, sends or brings into the country, or has in his possession, any blank or partly blank invoice form capable of being filled up and used as a genuine invoice is guilty of an offence.

Penalty: <sup>320</sup>Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

***Division 3.******Penalties.*****160. PENALTIES FOR OFFENCES IN RELATION TO NARCOTIC DRUGS.**

<sup>321</sup>(1) This section applies to offences against Section 23(4), 148(1), 149(1), 150 or 151(2), that are punishable as provided by this section.

(2)<sup>322 323</sup>The penalty for an offence to which this section applies is, subject to Subsections (3) and (5) and to Sections 163 and 164, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 10 years, or both.

(3)<sup>324 325</sup>Where the offence relates to the importing, exporting or possession of narcotic drugs for the offender's personal use only, the penalty for the offence is, subject to Subsection (5) and to Sections 163 and 164, a fine not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(4) An offence to which this section applies may be prosecuted summarily or on indictment.

<sup>317</sup> Section 158 amended by No. 18 of 1982, Sched. 1.

<sup>318</sup> Section 158: penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 158 Amended by No. 13 of 2001, Sched. 1.

<sup>319</sup> Section 159 amended by No. 18 of 1982, Sched. 1.

<sup>320</sup> Section 159: penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 159 Amended by No. 13 of 2001, Sched. 1.

<sup>321</sup> Section 160 amended by No. 18 of 1982, Sched. 1.

<sup>322</sup> Section 160 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 160(2) amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1.

<sup>323</sup> Section 160 Subsection (2) amended by No. 13 of 2001, Sched. 1; Section 160(2) amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1.

<sup>324</sup> Section 160 Subsection (3) amended by No. 13 of 2001, Sched. 1; Section 160(3) amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1.

<sup>325</sup> Section 160 Subsection (3) amended by No. 13 of 2001, Sched. 1; Section 160(3) amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1.

(5) When proceedings for an offence to which this section applies are brought in a District Court—

- (a) the Court may commit the defendant for trial or, with the consent of the defendant, determine the proceedings; and
- (b)<sup>326</sup> where the Court determines the proceedings it shall not impose a fine less than K5,000.00 and exceeding K50,000 or sentence the defendant to imprisonment for a term exceeding two years, or both.

### 161. GENERAL PENALTY.

<sup>327</sup>A person who commits an offence against this Act for which no other penalty is provided is liable, subject to Sections 163, 164 and 165, to a fine not less than K1,500.00 and not exceeding K5,000.00.

### 162. PENALTIES IN ADDITION TO FORFEITURES.

All penalties under this Act are in addition to any forfeitures.

### 163. MINIMUM PENALTIES.

(1)<sup>328 329</sup>The minimum fine for an offence against this Act that is punishable by a fine is 10% of the maximum fine, other than a fine that is increased by virtue of Section 164, that may be imposed under this Act for the offence.

(2) A minimum fine imposed by this Act shall not be reduced under any power of mitigation that would, but for this section, be possessed by the court.

### 164. MAXIMUM PENALTIES IN CERTAIN CASES.

(1)<sup>330 331</sup>Notwithstanding anything in this Act, if a fine only is provided by this Act for an offence and the maximum fine is less than three times the value of any goods in respect of which the offence is committed, the maximum fine for the offence is five times the value of the goods.

(2) A person may at the same time be charged with—

- (a) an offence against this Act; and
- (b) an intent to defraud the public revenue,

and if he is convicted of both the offence and that intent the maximum penalty is twice that which is otherwise provided for the offence.

<sup>326</sup> Section 160(5)(b) amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 160 Subsection (5) amended by No. 13 of 2001, Sched. 1.

<sup>327</sup> Section 161 Amended by No. 13 of 2001, Sched. 1; Section 161 amended by No. 18 of 1982, Sched. 1; Section 161 amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

<sup>328</sup> Section 163 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>329</sup> Section 163 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>330</sup> Section 164 Subsection (1) amended by No. 13 of 2001, Sched. 1.

<sup>331</sup> Section 164 Subsection (1) amended by No. 13 of 2001, Sched. 1.

**165. PENALTY ON SECOND CONVICTION.**

<sup>332</sup>Where—

- (a) a person is convicted of an offence against this Act for which a fine only is provided; and
- (b) he has been previously convicted of a similar offence,

the court may, instead of or in addition to imposing a fine, impose a sentence of imprisonment for a term of not less than twelve months and not exceeding two years, with or without the right of release on payment of a fine.

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<sup>332</sup> Section 165 Amended by No. 13 of 2001, Sched. 1.

**PART XIII. – CUSTOMS PROSECUTIONS.****166. INTERPRETATION OF PART XIII.**

In this Part, “**Customs prosecution**” means any proceedings by the Customs for–

- (a) the recovery of a penalty under this Act; or
- (b) the condemnation of any ship, aircraft or goods seized as forfeit.

**167. INSTITUTION OF PROSECUTIONS.**

<sup>333</sup>(1) A Customs prosecution may be instituted–

- (a) in the National Court–by appropriate proceedings in the name of the Commissioner General; or
- (b)<sup>334</sup> if the penalty does not exceed K5,000.00 or the excess is abandoned–in a District Court.

(2)<sup>335</sup> <sup>336</sup>Where a Customs prosecution has been instituted by an officer in the name of the Commissioner General, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Commissioner General.

(3)<sup>337</sup> <sup>338</sup>Production of a telegram or radiogram purporting–

- (a)<sup>339</sup> to be signed by the Commissioner General; and
- (b) to authorize an officer to institute any Customs prosecution or proceedings,

is admissible in evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner General.

**168. PRACTICE IN PROSECUTIONS.**

A Customs prosecution in the National Court may be commenced, prosecuted and proceeded with in accordance with–

- (a) any rules of practice established by the Court for proceedings by the State in revenue matters; or
- (b) the usual practice and procedure of the Court in civil cases; or
- (c) any directions of the Court or a Judge.

<sup>333</sup> Section 167 amended by No. 18 of 1982, Sched. 1.

<sup>334</sup> Section 167(1)(b) amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1.

<sup>335</sup> Section 167(2) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>336</sup> Section 167(2) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>337</sup> Section 167(3) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>338</sup> Section 167(3) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.

<sup>339</sup> Section 167(3)(a) amended by *Customs (Budget Provisions) Act* 1992 (No. 32 of 1992), s5.



**169. COMMENCEMENT OF PROSECUTIONS.**

A Customs prosecution may be brought within five years after the cause of the prosecution.

**169A. OFFENCES BY COMPANIES AND LIABILITY FOR ACTS OF AGENTS OR EMPLOYEES.**

<sup>340</sup>(1) Where an offence under this Act or the Regulations is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, and the body corporate, are severally guilty of that offence.

(2) Whenever any agent or employee in the course of his employment does or omits to do an act, the doing of which or omission to do which by his principal or employer would be an offence, the agent or employee shall be guilty of that offence.

(3) In any proceedings jointly against the body corporate and a director or officer thereof for an offence under this Act, any evidence that the body corporate was guilty of such an offence shall be deemed to be evidence that the director or officer was guilty of that offence.

(4) Any person who would have been guilty of an offence if anything had been done or omitted to be done by him personally shall be guilty of that offence and shall be liable to the same penalty if that thing had been done or omitted to be done by his partner, agent or employee in the course of the partnership business or in the scope of his employment, as the case may be, unless he proves to the satisfaction of the court that the offence was committed without his knowledge and that he took all reasonable precautions to prevent that act or omission.

**170. PROTECTION TO WITNESSES.**

(1)<sup>341</sup> <sup>342</sup>A witness on behalf of the Commissioner General or a Collector in a Customs prosecution shall not be compelled to disclose—

- (a) the fact that he received any information; or
- (b) the nature of the information; or
- (c) the name of the person who gave the information.

(2) An officer appearing as a witness in a Customs prosecution shall not be compelled to produce any reports—

- (a) made or received by him confidentially in his official capacity; or
- (b) containing confidential information.

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<sup>340</sup> Section 169A Inserted by No. 10 of 2005, s. 33.

<sup>341</sup> Section 170(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>342</sup> Section 170(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

**171. AVERMENTS.**

(1) In a Customs prosecution, any averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim is prima facie evidence of the matter averred.

(2) This section applies to any matter averred even if—

- (a) evidence in support or rebuttal of it or of any other matter is given; or
- (b) it is a mixed question of law and fact,

but in a case to which Paragraph (b) applies the averment is evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter averred shall be considered on its merits, and the credibility and probative value of the evidence is not increased or diminished by reason of this section.

(4) The preceding provisions of this section do not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section does not lessen or affect any burden of proof otherwise falling on the defendant.

**172. GOODS IN THE CONTROL OF THE CUSTOMS.**

Where in any proceedings on behalf of the Customs in relation to any goods subject to the control of the Customs it is necessary to allege any property in the goods, the goods may be alleged to be the property of the Collector without specifying his name.

**173. LEVY OF PENALTY ON GOODS.**

Where a pecuniary penalty adjudged against a person is unpaid, the Collector may levy the penalty by the sale of any goods belonging to the person that are from time to time subject to the control of the Customs.

**174. AFFECT OF IMPRISONMENT.**

The suffering of imprisonment for non-payment of a penalty does not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Act other than by imprisonment of the person concerned.

**175. COSTS.**

In a Customs prosecution—

- (a) the court may award costs against any party or claimant; and

- (b) all provisions of this Act relating to the recovery of penalties (except provisions for commitment to prison) extend to the recovery of any costs adjudged to be paid.

**PART XIV. – DISPUTES AS TO DUTY.****176. PAYMENT UNDER PROTEST.**

(1) If a dispute arises as to–

- (a) the amount or rate of duty on any goods; or
- (b) the liability of any goods to duty under any Customs tariff,

the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods.

(2) A protest under Subsection (1) shall be made by writing on the entry of the goods the words “Paid under protest” and adding a statement of–

- (a) the grounds on which the protest is made; and
- (b) if the entry relates to more than one description of goods–the goods to which the protest applies,

followed by the signature of the owner of the goods or his agent.

(3) The sum paid under Subsection (1) shall, as against the owner of the goods, be deemed to be the amount of the proper duty unless the contrary is determined in proceedings brought under Subsection (4).

(4) Within the period prescribed by Subsection (5)(b), the owner of the goods may bring proceedings against the Collector in any court of competent jurisdiction for the recovery of the whole or any part of the sum paid.

(5) Proceedings do not lie for the recovery of any sum paid to the Customs, as the duty payable in respect of any goods, unless–

- (a) the payment is made under protest under Subsection (1); and
- (b) the sum is paid as the duty payable under any Customs tariff, and the proceedings are commenced within six months after the date of payment.

(6) This section does not affect any rights or powers under Section 104.

**PART XV. – SETTLEMENT OF DISPUTES BY THE COMMISSIONER  
GENERAL.**

**177. DISPUTES AS TO CONTRAVENTIONS OF ACT.**

<sup>343</sup>(1)<sup>344</sup> <sup>345</sup>If a dispute arises between an officer and a person concerning a contravention of this Act, the Commissioner General may, with the written consent of the person, inquire into and determine the dispute in the prescribed manner.

(2)<sup>346</sup> <sup>347</sup>An inquiry under this section shall be held in public, and the Commissioner General may—

- (a) summon the parties and any witnesses to appear before him; and
- (b) take evidence on oath or affirmation; and
- (c) require the production of documents; and
- (d) allow reasonable expenses to witnesses and costs to the successful party.

(3) A person who is summoned as a witness at an inquiry under this Act and who—

- (a) disobeys the summons; or
- (b) refuses to be sworn or affirmed as a witness; or
- (c) refuses or fails to produce a document that he is required to produce; or
- (d) being sworn or affirmed as a witness—refuses or fails to answer a question that is lawfully put to him,

is guilty of an offence.

Penalty: <sup>348</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(4)<sup>349</sup> <sup>350</sup>A person who wilfully makes a false statement in evidence on oath at an inquiry held by the Commissioner General under this section is guilty of an offence that may be prosecuted summarily or on indictment.

Penalty: <sup>351</sup>Subject to Section 165, on summary conviction – a fine not exceeding K5,000.00 or imprisonment not exceeding twelve months, or both.

<sup>343</sup> Section 177 amended by No. 18 of 1982, Sched. 1.

<sup>344</sup> Section 177(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>345</sup> Section 177(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>346</sup> Section 177(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>347</sup> Section 177(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>348</sup> Section 177(3): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 177 Subsection (3) amended by No. 13 of 2001, Sched. 1.

<sup>349</sup> Section 177(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>350</sup> Section 177(4) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>351</sup> Section 177(4): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 177 Subsection (4) amended by No. 13 of 2001, Sched. 1.

Subject to Section 165, on conviction on indictment – imprisonment for a term not exceeding 4 years.

(5)<sup>352</sup> <sup>353</sup>In an inquiry under this section, the Commissioner General may, by order, impose, enforce, mitigate or remit any penalty or forfeiture that he finds to have been incurred.

(6) An order under Subsection (5) shall be notified in the National Gazette, and a copy shall be delivered to the person concerned.

(7) An order under Subsection (5) is final, and may be enforced in the same way as an order of a court of summary jurisdiction.

#### **178. SETTLEMENT OF OTHER DISPUTES.**

(1)<sup>354</sup> <sup>355</sup>If a dispute as to a matter not involving a contravention of this Act arises under this Act or in relation to the Customs, the matter may, at the request of the persons interested, be referred to the Commissioner General for decision, and the Commissioner General may, in such manner as he thinks proper, inform himself as to the circumstances, and determine the matter.

(2) A determination by the Commissioner General under Subsection (1) is final.

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<sup>352</sup> Section 177(5) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>353</sup> Section 177(5) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>354</sup> Section 178(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>355</sup> Section 178(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

**PART XVI. – THE COASTING TRADE.****179. THE COASTING TRADE, AND COASTING SHIPS AND AIRCRAFT.**

<sup>356</sup>A ship or aircraft trading, plying or going from one port, airport or place in the country to another port, airport or place in the country, and not trading, plying or going to any other port, airport or place—

- (a) shall be deemed to be engaged in the coasting trade; and
- (b) is a coasting ship or aircraft for the purposes of any *Customs Act*.

**180. COASTERS TAKING IN CARGO AT SEA, ETC.**

<sup>357</sup>The master of a coasting ship or the pilot of a coasting aircraft who—

- (a) allows any goods to be taken into, or put out of, his ship or aircraft from or into any other ship at sea, or from or into any other aircraft, except with the permission of the Collector; or
- (b) allows his ship or aircraft to deviate from her voyage,

unless forced to do so—

- (c) by unavoidable circumstances; or
- (d) under circumstances explained to the satisfaction of the Collector,

is guilty of an offence.

Penalty: <sup>358</sup>Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

**181. REPORT OF COASTING SHIP OR AIRCRAFT.**

(1) The owner of a coasting ship or aircraft may, with the consent of the Collector, report the ship or aircraft inwards or outwards, instead of the master of the ship or the pilot of the aircraft doing so.

(2) The owner of a ship or aircraft reporting it under Subsection (1) is subject to the same provisions, and liable to the same penalties, under this Act as the master of the ship or the pilot of the aircraft would be.

**182. ACCOUNT OF LOCALLY-PRODUCED GOODS.**

The master or owner of a coasting ship must, at prescribed ports, deliver to the Collector, as prescribed, particulars of all cargo consisting of produce or manufactures of the country then on board his ship.

<sup>356</sup> Section 179 amended by *Customs (Amendment) Act 1998* (No. 5 of 1998), s3.

<sup>357</sup> Section 180 amended by No. 18 of 1982, Sched. 1.

<sup>358</sup> Section 180: penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 180 Amended by No. 13 of 2001, Sched. 1.

Penalty: <sup>359</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

**183. REGULATION OF COASTING TRADE.**

As regards the Customs, the coasting trade shall be regulated in the prescribed manner, and books shall be kept, documents produced and entries made accordingly.

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<sup>359</sup> Section 182: penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s1; Section 182 Amended by No. 13 of 2001, Sched. 1.



**PART XVII. – AGENTS.****184. AUTHORIZED AGENTS.**

<sup>360</sup>(1) In any place or in relation to any category of goods or any manner of importation of goods prescribed or designated by notice in the National Gazette for the purpose of this section, the owner of any goods (other than goods of a personal private nature or not imported for commercial purposes) shall comply with this Act by or through a lawfully authorized agent.

(2) For the purposes of Subsection (1) a lawfully authorized agent shall be a Customs agent licensed in the prescribed manner.

(3)<sup>361</sup> <sup>362</sup>For the purposes of Subsection (1), an authorised agent shall obtain from the owner of the goods a written authority authorizing that agent to act on behalf of the owner in respect of those goods, such authority to be for a particular shipment or shipments or for an ongoing period.

(4)<sup>363</sup> <sup>364</sup>The written authority shall be in a form approved by Commissioner-General and shall be retained by the authorised agent for a period of five years from the transaction to which the written authority relates.

(5)<sup>365</sup> <sup>366</sup>A authorized agent, who fails to comply with Subsections (3) or (4), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

**185. PRODUCTION OF AUTHORITY ON DEMAND.**

An officer—

- (a) may require an agent to produce his written authority from the principal for whom he claims to act; and
- (b) in default of production of the authority, may refuse to recognize the agency.

**186. PERSONAL LIABILITY OF AGENTS.**

<sup>367</sup>(1) Where a person—

- (a) is expressly or impliedly authorized by the owner to act as his agent in relation to any goods for all or any purposes of this Act; or

<sup>360</sup> Section 184 repealed and replaced by *Customs (Amendment) Act* 1996 (No. 9 of 1996), s1.

<sup>361</sup> Section 184 Subsection (3) inserted by No. 10 of 2005, s. 34.

<sup>362</sup> Section 184 Subsection (3) inserted by No. 10 of 2005, s. 34.

<sup>363</sup> Section 184 Subsection (4) inserted by No. 10 of 2005, s. 34.

<sup>364</sup> Section 184 Subsection (4) inserted by No. 10 of 2005, s. 34.

<sup>365</sup> Section 184 Subsection (5) inserted by No. 10 of 2005, s. 34.

<sup>366</sup> Section 184 Subsection (5) inserted by No. 10 of 2005, s. 34.

<sup>367</sup> Section 186 repealed and replaced by *Customs (Amendment) Act* 1996 (No. 9 of 1996), s2.

(b) represents or passes himself, or acts or assumes to act, as such an agent,

he shall be deemed also to be, for these purposes, the owner of the goods, and is personally liable for any customs duties or imports, chargeable or any penalties recoverable under this Act in the same manner and to the same extent as if he were the principal.

(2) Subsection (1) does not relieve any principal from personal liability.

**187. LIABILITY OF PRINCIPAL FOR ACTIONS OF AGENT.**

A declaration authorized by this Act that is made by the agent of a person shall be deemed to have been made with the knowledge and consent of the person, so that in a prosecution in respect of a declaration made by the agent the principal is liable to the pecuniary punishment provided by any *Customs Act* as if he had made the declaration himself.

## PART XVIII. – MISCELLANEOUS.

## 188. GOODS ON COMMISSIONED SHIPS AND AIRCRAFT.

(1)<sup>368</sup> <sup>369</sup>The person in command of a ship or aircraft of the Defence Force, or holding a commission from the Queen or from a foreign State, that has on board goods (other than ships' stores or aircraft's stores) loaded outside the country must, when called on by the Commissioner General, the Collector or an officer specially authorized by the Commissioner General or the Collector to do so—

- (a) deliver a written account of—
  - (i) the quantity of the goods; and
  - (ii) the marks and numbers of the goods; and
  - (iii) the names of the shippers and consignees,

and declare to the truth of the account; and

- (b) answer questions relating to the goods.

Penalty: <sup>370</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(2) Ships or aircraft of the Defence Force, or holding commissions from the Queen or a foreign State, that have on board any goods (other than ships' stores or aircraft's stores) loaded outside the country may be boarded and searched by an officer specially authorized under Subsection (1) in the same manner as other ships or aircraft, and the officer may bring any such goods ashore and place them in a Government warehouse.

## 189. COLLECTORS' SALES.

(1) Where the Collector sells any goods under this Act—

- (a) the goods shall be sold by auction or by tender, after such public notice as is prescribed, or in the absence of such prescription after reasonable public notice; and
- (b) the goods may be sold free or subject to duty and charges; and
- (c) the purchase price shall be paid in cash on the acceptance of a bid or tender; and
- (d) no bid or tender need be accepted; and
- (e) the goods may be re-offered until sold at a price satisfactory to the Collector.

(2)<sup>371</sup> <sup>372</sup>The proceeds of any goods sold by the Collector shall be applied—

<sup>368</sup> Section 188(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>369</sup> Section 188(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>370</sup> Section 188(1): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 188 Subsection (1) amended by No. 13 of 2001, Sched. 1.

- (a) firstly, in the payment of the expenses of the sale; and
- (b) secondly, in payment of any duty payable; and
- (c) thirdly, in payment of any warehouse rent and charges; and
- (d) fourthly, if written notice of the harbour dues, wharfage dues or freight has been given to the Collector, in payment of any harbour dues, wharfage dues or freight due on the goods,

and the balance (if any) shall be paid to the Commissioner General on account of the person entitled to the goods.

#### **190. ALTERATION OF AGREEMENTS WHERE DUTY ALTERED.**

(1) If, after an agreement is made for the sale or delivery, duty-paid, of any goods, an alteration takes place in the duty collected that affects the goods before they are entered for home consumption, in the absence of any express written provision to the contrary the succeeding provisions of this section apply and the agreement shall be deemed to have been altered accordingly.

(2) If the alteration to the duty is a new duty or an increase in duty, the seller may, after payment of the new or increased duty, add the difference to the agreed price.

(3) If the alteration to the duty is the abolition or reduction of duty, the purchaser may deduct the difference from the agreed price.

(4) Any refund or payment of additional duty resulting from the alteration to the duty not being finally adopted shall be allowed between the parties in such manner as the case requires.

#### **191. RECOVERY OF DUTY.**

<sup>373</sup>(1) Customs duty is a debt to the State and is –

- (a) charged on the goods in respect of which it is payable; and
- (b) payable by the owner of the goods,

and may be recovered at any time in any court of competent jurisdiction by proceedings in the name of the Commissioner.

(2) In pursuing a debt to the State, the Commissioner may withhold from the debtor the assessment of an entry and refuse the release of goods for home consumption until such time as the debt has been discharged or dealt with to the satisfaction of the Commissioner.

(3) Goods that are subject to Subsection (2) that have not lawfully been removed from the control of customs within a period of 30 days after their

<sup>371</sup> Section 189(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>372</sup> Section 189(2) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>373</sup> Section 191 Substituted by No. 10 of 2005, s. 35.

importation, are, at the termination of that period, deemed to have been abandoned by the owner and are forfeited to the State.

(4) The proceeds of any sale of goods subject to this section shall be applied to amounts owed by the debtor, any expenses incurred by the State in respect of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.

**191AA. STATUTORY GARNISHEE.**

<sup>374</sup>(1)<sup>375</sup> <sup>376</sup>In this Section—

“**duty**” means customs duties and includes a judgement debt and costs in respect of any such duty;

“**taxpayer**” means any person against whom the Commissioner of Customs is entitled to recover any duty or penalty that is due and payable under this Act.

(2) The Commissioner of Customs may at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the taxpayer at his last place of address known to the Commissioner of Customs), require—

- (a) any person by whom any money is due or accruing or may become due to the taxpayer; or
- (b) any person who holds or may subsequently hold money for or an account of the taxpayer; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) any person having authority from some other person to pay to the taxpayer,

to pay to the Commissioner of Customs, either forthwith upon the money becoming due or being held or at or within a time specified in the notice (not being a time before the money due or is held)—

- (e) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of any duty and of any fines, penalties and costs imposed upon him under this Act, or the whole of the money when it is equal to or less than the amount; or
- (f) such amount as is specified in the notice out of each of any payments that the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect to any duty, penalties, fines and costs imposed upon him under this Act satisfied and the Commissioner of Customs may at any time, or from

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<sup>374</sup> Section 191AA inserted by *Customs (Amendment) Act 1996* (No. 9 of 1996), s3.

<sup>375</sup> Section 191AA(1) amended by *Customs (Budget Provisions 1999) Act 1998* (No. 30 of 1998).

<sup>376</sup> Section 191AA(1) amended by *Customs (Budget Provisions 1999) Act 1998* (No. 30 of 1998).

time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) A person who fails to comply with a notice under this Section is liable to pay—

- (a) the amount specified in the notice; or
- (b) the amount due or held on behalf of the taxpayer,

whichever is the lesser amount, and any amount collected under this subsection shall be applied against the debt of the taxpayer.

(4) In addition to any amount that he is liable to pay under Subsection (3), a person, who fails to comply with a notice under this section, is guilty of an offence.

Penalty: <sup>377</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K50,000.00.

(5) A person making a payment in pursuance of this Section shall be deemed to have been acting under the authority of the taxpayer and all other persons concerned and is, by force of this subsection indemnified in respect of that payment.

(6) If the Commissioner of Customs receives a payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice of receipt of the payment to that person.

#### **191AB. ISSUE OF CLEARANCE CERTIFICATE.**

<sup>378</sup>(1) Upon application by or on behalf of a person about to leave Papua New Guinea, the Commissioner General may, where he is satisfied—

- (a) that duty is not payable by that person; or
- (b) that arrangements have been made to the satisfaction of the Commissioner General for the payment of any duty that is or may become payable by that person,

issue a certificate that there is no objection to the departure of that person from Papua New Guinea.

(2) A certificate issued under the last preceding subsection remains in force until—

- (a) the expiration of a period of one month from the date of issue of the certificate or such other period, if any, as is specified in the certificate; or
- (b) the certificate is revoked,

whichever first occurs.

<sup>377</sup> Section 191AA Subsection (4) amended by No. 13 of 2001, Sched. 1.

<sup>378</sup> Section 191AB inserted by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s5.

**191AC. CLEARANCE CERTIFICATE TO BE PRODUCED TO SHIPOWNER ETC.**

<sup>379</sup>(1) When so required by the Commissioner General, the owner or charterer or an agent or other representative of the owner or charterer, of a ship or aircraft shall not issue or permit the issue of an authority for a person to travel from Papua New Guinea on the ship or aircraft unless there has been presented to the owner, charterer, agent or other representative, as the case may be, a certificate issued in respect of that person under Section 191AB, being a certificate that is in force on the day on which it is presented.

(2) A person who, in contravention of the Subsection (1), issues, or permits the issue of, an authority for a person to travel on a ship or aircraft is personally liable to pay the amount of duty, if any, that is or may become payable by that last mentioned person and, in addition, is guilty of an offence.

Penalty: <sup>380</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

(3) Where a ship or aircraft departs from a place at which the ship or aircraft has taken on board a passenger in respect of whom a certificate issued under Section 191AB has been presented for the purpose of obtaining authority for that person to travel from Papua New Guinea in that ship or aircraft, the owner or charterer of the ship or aircraft, or, where the owner or charterer does not have a place of business at that place, the principal agent of the owner or charterer at that place, shall, not later than the first working day after the departure of the ship or aircraft from that place, or as soon thereafter as is practicable, lodge, or cause to be lodged, at the office of the Commissioner General—

- (a) that certificate; and
- (b) a list showing the name, last known address in Papua New Guinea and place of destination of every person (other than members of the crew or staff of the ship or aircraft) taken on board the ship or aircraft at that first-mentioned place.

(4) A person who fails to comply with the Subsection (3) is guilty of an offence.

Penalty: <sup>381</sup>Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

<sup>379</sup> Section 191AC inserted by *Customs (Budget Provisions 2000) Act 1999* (No 16 of 1999), s6.

<sup>380</sup> Section 191AC Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>381</sup> Section 191AC Subsection (4) amended by No. 13 of 2001, Sched. 1.

191A<sup>382</sup>. [REPEALED.]

## 192. DECLARATIONS.

<sup>383</sup>(1)<sup>384</sup> <sup>385</sup>Declarations for the purposes of this Act may be made before the Commissioner General, a Collector or a justice, or an officer authorized for the purpose by the Commissioner General or a Collector.

(2) A person who knowingly receives a declaration under this Act by a person under the age of 18 years is guilty of an offence.

Penalty: <sup>386</sup>A fine not exceeding K1,500.00.

## 192A. CUSTOMS CONTROL.

<sup>387</sup>Nothing in this Act shall be read so as to diminish the rights of the State in relation to the contiguous zone, territorial sea, the internal waters, the offshore seas and the archipelagic waters as described in the *National Seas Act 1977*.

## 193. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing—

- (a) the nature, size and material of the packages in which imported goods or goods for export are to be packed, or the coverings in which they are to be wrapped; and
- (b) the maximum or minimum weight or quantity of imported goods or goods for export that may be contained in a package; and
- (c) the conditions of preparation or manufacture for export of any articles used—
  - (i) for food or drink by man; or
  - (ii) in the manufacture of articles used for food or drink by man; and
- (d) the conditions as to purity, soundness and freedom from disease to be met by goods for export; and

<sup>382</sup> Section 191A added by No. 40 of 1978, s2; Repealed by No. 17 of 2004, s. 13.

<sup>383</sup> Section 192 amended by No. 18 of 1982, Sched. 1.

<sup>384</sup> Section 192(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>385</sup> Section 192(1) amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

<sup>386</sup> Section 192(2): penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s1; Section 192 Subsection (2) amended by No. 13 of 2001, Sched. 1.

<sup>387</sup> Section 192A Amended by No. 27 of 2003, s. 6; inserted by *Customs (Budget Provisions) Act 1993* (No. 44 of 1993), s4.



- (e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage; and
- (f)<sup>388</sup> subject to Sections 163, 164 and 165, penalties of fines not exceeding K1,500.00 for offences against the regulations.

#### 194. REFUND SET-OFF.

<sup>389</sup>Where the Commissioner of Customs is required or authorized under Sections 104, 108 and any other section to make a refund of any customs duty or drawback of auctions duty, the Commissioner of Customs may, on the written application by or on behalf of the person to whom the refund is due (“the taxpayer”) apply or credit the amount of the refund to any income tax or withholding tax or salary or wages tax or stamp duty or excise duty or any other tax or duty charged, levied or imposed under any revenue legislation administered by the Commissioner General payable by the taxpayer.

#### 195. COMPUTER SERVICE.

<sup>390</sup>(1) The Commissioner-General may establish and operate a computer service and make provision for any manifest, return, list, statement, declaration, direction, notice, permit, receipt or other document required or authorised by this Act to be made, served or submitted by electronic transmission (referred to in this Act as an electronic notice).

(2) A registered user may, in accordance with the conditions set by the Commissioner-General under Subsection (12), make and serve an electronic notice to the computer account of the Commissioner-General.

(3) The Commissioner-General or any person authorised by him may, in accordance with the conditions set under Subsection (12), make and serve an electronic notice to the computer account of a registered user.

(4) Where an electronic notice is transmitted to the computer account of the Commissioner-General using the authentication code assigned to a registered user –

- (a) with or without the authority of the registered user; and
- (b) before the notification to the Commissioner-General by the registered user in the required manner, of cancellation of the authentication code, that notice shall, for the purposes of this Act, be presumed to be made by the registered user unless he provides evidence to the contrary.

(5) Where the registered user alleges that he has transmitted no such electronic notice referred to in Subsection (4), the burden of proof to provide evidence of that fact is on the user.

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<sup>388</sup> Section 193 Amended by No. 13 of 2001, Sched. 1.

<sup>389</sup> Section 194 inserted by *Customs (Budget Provisions 1996) Act 1995* (No. 42 of 1995), s3.

<sup>390</sup> Section 195 Inserted by No. 10 of 2005, s. 36.

(6) For the purposes of this Act, an electronic notice or a copy thereof shall not be inadmissible in evidence merely on the basis that it was transmitted without the making or delivery of any equivalent document or counterpart in paper form.

(7) Notwithstanding any other written law, in any proceedings under this Act, an electronic notice or a copy thereof (including a print-out of that notice or copy) or any database report (including a print-out of the report) relating to that notice –

- (a) certified by the Commissioner-General to contain all or any information transmitted in accordance with this section; and
- (b) duly authenticated in the manner specified in Subsection (8) or is otherwise duly authenticated by showing that there is copy thereof certified by the Commissioner,

shall be admissible as evidence of the facts stated or contained therein.

(8) For the purposes of this section, a certificate –

- (a) giving the authentication code and other particulars of any user and device (if known) involved in the production and transmission of, and identifying the nature of, the electronic notice or copy thereof; and
- (b) purporting to be signed by the Commissioner or by a person occupying a responsible position in relation to the operation of the computer service at the relevant time,

shall be sufficient evidence that the electronic notice or copy thereof has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(9) Where an electronic notice or a copy thereof is admissible under Subsection (7), it shall be presumed, until the contrary is proved, that the contents of the electronic notice or copy thereof have been accurately transmitted.

(10) The Commissioner may, for the purpose of facilitating any electronic transmission under this section, approve the use in any such electronic transmission of symbols, codes, abbreviations or other notations to represent any particulars or information required under this Act.

(11) Any person transmitting an electronic notice on behalf of another person shall not divulge or disclose the contents of any electronic notice or a copy thereof without the prior written consent of the Commissioner-General.

(12) The Commissioner may provide written conditions for –

- (a) subscription to the computer service, including the manner in which the authentication codes are to be assigned; and
- (b) the manifests, returns, lists, statements, declarations, directions, notices, permits, receipts or any other document which may be transmitted through the computer service including the form and manner in which they are to be transmitted; and
- (c) the correction of errors in or amendments to electronic notices; and

- (d) the procedure for use of the computer service including the procedure in circumstances where there is a breakdown or interruption in the service; and
- (e) generally for the better provision of the computer service.

## SCHEDULE 1

**PAPUA NEW GUINEA.****Customs Act 1951.****Form 1 – Writ of Assistance..**

Sec. 115. Form 1.

To all members of the Police Force and to all whom it may concern:  
 You are commanded to permit . . . , of . . . , an officer (or officers) of the Customs of Papua New Guinea, and his (or their) assistants, at any time in the day or night, to enter into and search any house, premises or place, and to break it open and to search it and any chests, trunks or packages in which goods may be or are supposed to be, and to seize any goods that are forfeit to the State and any goods that he has (or they have) reasonable cause to believe are forfeit to the State, and to take them to the nearest Government warehouse or to such other places of security as the Collector directs.  
 All powers that can be granted under a writ of assistance are granted to (name(s) of officer or officers in respect of whom writ granted, as set out above).  
 All members of the Police Force and other persons in Papua New Guinea are commanded, on sight of this writ and on being required to do so by him, to assist any person named in this writ in the matters set out above.  
 Dated . . . 20 . . . .

By the Court.

**PAPUA NEW GUINEA.****Customs Act 1951.****Form 2 – <sup>391</sup>Customs Warrant under Section 116..**

Sec. 116. Form 2.

To  
 You are authorized, at any time in the day, or in the night if necessary, to enter into and search any house, premises or place, and to break it open and to search it and any chests, trunks or packages in which goods may be or are supposed to be, and to seize and take away any goods that are forfeit to the State, and any goods that you have reasonable cause to believe are forfeit to the State, that you find in the house, premises or place, and without delay to put them and secure them in a Government warehouse or such other place of security as the Collector directs.  
 Unless earlier revoked, this warrant remains in force for a period of . . . from its date.  
 Dated . . . 20 . . . .

Commissioner General

<sup>391</sup> Schedule 1 Form 2 amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.

**PAPUA NEW GUINEA.**

**Customs Act 1951.**

**Form 3 – Customs Warrant under Section 131..**

Sec. 131. Form 3.

To

\*WHEREAS written information has been given to me that goods have been unlawfully imported, exported, undervalued or entered, or illegally dealt with, or that it is intended to unlawfully import, export, undervalue or enter, or to unlawfully deal with, goods;

\*WHEREAS goods have been seized or detained;

You are authorized, if . . . fails to comply without delay with any requirement under Section 131 of the *Customs Act*, at any time in the day or night to enter into and search any house, premises or place in which any books or documents relating to the goods may be, or are supposed to be, and to break it open and to search any person in or on it and any chests, trunks and packages in or on it, and to take possession of, remove and impound any such books and documents that are found.

This warrant remains in force for one month from its date.

Dated . . . 20 . . . .

Collector of Customs.

\*Strike out if inapplicable.

<sup>1</sup>Form 3, schedule amended by *Customs (Budget Provisions) Act 1992* (No. 32 of 1992), s5.