



REPUBLIC OF NAURU

# Customs Act 1921

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**As in force from 1 November 2010**

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This compilation comprises Ordinance No. 20 of 1921 (New Guinea) (adopted as a law of Nauru by the *Customs Regulations Ordinance 1922*, No. 14 of 1922, now cited as the *Law Adoption (Customs) Act 1922*) as amended and in force from 1 November 2010 (being, at the time the compilation was prepared on 16 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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**REPUBLIC OF NAURU**  
**Customs Act 1921**

An Ordinance relating to the Customs

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**PART I – PRELIMINARY**

**1 Short title**

This Ordinance may be cited as the *Customs Act 1921*.

**2 Commencement**

This Ordinance shall commence on a day to be fixed by the Administrator by notice in the *New Guinea Gazette*.

**3 Parts**

This Ordinance is divided into Parts as follows:

PART I – Preliminary

PART II – Administration

PART III – Customs Control, Examination, Entries and Securities generally

PART IV–The Importation of Goods

Division 1 – Prohibited Imports

Division 2 – The Boarding of Ships

Division 3 – The Report of the Cargo

Division 4 – The Entry, Unshipment, Landing and Examination of Goods

PART V – The Warehousing of Goods

Division 1 – Licensed Warehouses

Division 2 – King's Warehouses

PART VI – The Exportation of Goods

PART VII – Ships' Stores

PART VIII – The Duties

Division 1–The Payment and Computation of Duties  
generally

Division 2 –Ad valorem Duties

Division 3 – Deposits, Abatements, Remissions, and  
Refunds of Duties

Division 4 – Disputes as to Duties

PART IX — Drawbacks

PART X — The Coasting Trade

PART XI — Agents

PART XII — Officers

Division 1 — Powers of Officers

Division 2 — Protection of Officers

PART XIII — Penal Provisions

Division 1 — Forfeitures

Division 2 — Penalties

PART XIV — Customs Prosecutions

PART XV — Settlement of Cases by the Chief Collector

PART XVI — Regulations

PART XVII — Miscellaneous

#### 4 Definitions<sup>1</sup>

In this Ordinance, unless the contrary intention appears:

**'Answer questions'** means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information and belief, truly answer all questions on the subject mentioned that the Collector asks;

**'By authority'** means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used;

**'Carriage'** includes vehicles and conveyances of all kinds;

**'Chief Collector'** means the Chief Collector of Customs;

**'Collector'** includes the Chief Collector and any principal officer of Customs doing duty at the time and place and any officer

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<sup>1</sup> In relation to the expression **'Administrator'**, clause 86(2) of the *Constitution of Nauru* provides:

'Subject to this Constitution, a reference in a law continued in force by clause (1) or (2) of Article 85 to the Administrator of the Territory of Nauru shall, unless the context otherwise requires, be read as a reference to the President or where responsibility for the administration of that law is assigned to a Minister under Article 23, to that Minister.'

In relation to the expression **'Chief Collector'**, s. 2 of the *Customs Regulations Ordinance 1922* (now cited as the *Law Adoption (Customs) Act 1922*) provided for the substitution for 'Chief Collector' (wherever occurring) of 'Administrator'. Since an amendment in those terms cannot sensibly be applied to the definition of 'Chief Collector' in this section, this compilation retains all original references to 'Chief Collector', which should be interpreted in the light of that section and also in the light of clause 86(2) of the Constitution. See also the repeal and substitution of section 5, effected by the *Customs (Amendment) Act 2009* (as amended by the *Customs (Rates of Duty) Act 2010*), which evidences a contrary and subsequent legislative intention in relation to the meaning of Chief Collector.

Furthermore, s.6 of the *Customs Tariff Act 1997* provided (among other things) that this Ordinance is amended so that:

- references to 'The Customs' mean the department of the public service or a division of a department having, subject to a responsible Minister, the responsibility for the control of Customs;
- all references to 'The King', 'His Majesty's Dominions', 'the Territory' or 'British' shall be references to 'The Republic' or the Republic of Nauru' as may be appropriate in the context; and
- wherever the context clearly allows:
  - all references to 'ship' or 'ships' include 'aircraft'; and
  - all references to 'wharf' or 'wharf owner' include 'airport' and 'airport owner' respectively.

Because those amendments are not capable of being applied textually or their incorporation necessitates legal interpretation, they have not been included in this compilation. The *Customs Tariff Act 1997* was repealed by the *Customs (Rates of Duty) Act 2010*.

doing duty in the matter in relation to which the expression is used;

**'Documents'** includes books;

**'Drawback'** includes bounty or allowance;

**'Dutiable goods'** means dutiable goods as defined in section 3 of the *Customs (Rates of Duty) Act 2010*;

**'Gazette Notice'** means a notice signed by the Chief Collector and published in the New Guinea Gazette;

**'Goods'** includes all kinds of movable personal property;

**'Goods under drawback'** includes all goods in respect of which any claim for drawback has been made;

**'Justice'** means any Justice of the Peace having jurisdiction in the place;

**'Master'** means the person in charge of a ship, but does not include a pilot or Government officer;

**'Officer'** includes all persons employed in the service of the Customs;

**'Owner'**, in respect of goods, includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent or person possessed of, or beneficially interested in, or having any control of, or power of disposition, over the goods;

**'Owner'**, in respect of a ship, includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship;

**'Parts beyond the seas'** means any country outside the Territory;

**'Package'** includes every means by which goods are cased, covered, enclosed, contained or packed for carriage;

**'Port'** means any proclaimed port;

**'Produce documents'** means that the person on whom the obligation to produce documents is cast shall, to the best of his power, produce to the Collector all documents relating to the subject-matter mentioned;

**'Ship'** includes every description of vessel used in navigation not propelled by oars only;<sup>2</sup>

**'Smuggling'** means any importation or introduction or attempted importation or introduction of goods with intent to defraud the Revenue;

**'The Customs'** means the Department of Trade and Customs;

**'this Ordinance'** means this Act;

**'Warehouse'** means a warehouse licensed for the purposes of this Ordinance;

**'Wharf'** means a wharf appointed for the purposes of this Ordinance;<sup>3</sup>

**'Wharf owner'** includes the owner or occupier of a wharf.

## PART II – ADMINISTRATION

### 5 Chief Collector of Customs

The Chief Collector of Customs is the person from time to time appointed by the Chief Secretary to be the officer in charge of customs, and includes a person appointed to act in that position.

### 6 Delegation by Chief Collector

In relation to any particular matters or class of matters or to any particular district the Chief Collector may by writing under his hand delegate any of his powers and functions under any Customs Ordinance (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the district defined in the instrument of delegation.

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<sup>2</sup> Section 6 of the *Customs Tariff Act 1997* provided (among other things) that, wherever the context clearly allows, this Ordinance is amended so that all references to 'ship' or 'ships' include 'aircraft'. Those amendments have not been included in this compilation, because their incorporation would require legal interpretation.

<sup>3</sup> Section 6 of the *Customs Tariff Act 1997* provided (among other things) that, wherever the context clearly allows, this Ordinance is amended so that all references to 'wharf' or 'wharf owner' include 'airport' and 'airport owner' respectively. Those amendments have not been included in this compilation, because their incorporation would require legal interpretation.

**7 Delegation by Collector**

The Collector may with the written approval of the Chief Collector delegate in like manner as the Chief Collector any of his powers under this Ordinance.

**8 Revocation of delegation**

Every delegation whether by the Chief Collector or Collector shall be revocable in writing at will and no delegation shall prevent the exercise of any power by the Chief Collector or Collector.

**9 Continuance of officers**

All persons acting in the service of the Customs at the commencement of this Ordinance shall be deemed to have been duly appointed.

**10 Customs seal**

The seal of the Customs shall be the twelve point star of Nauru with the words 'Republic of Nauru' in the centre and around the outside circumference the words 'Police Prisons and Customs' or other words approved by the Minister.

**11 Customs flag**

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

**12 Appointment of boarding stations, &c.**

The Chief Collector may by proclamation published in the *New Guinea Gazette*:

- (a) appoint boarding stations for the boarding of ships by officers;
- (b) establish ports and fix their limits; and
- (c) appoint wharfs within ports and fix their limits.



**13 Appointment of ports and wharfs**

Ports and wharfs may be established or appointed for specified limited purposes or without limitation.

**14 Appointment of sufferance wharfs, &c.**

The Chief Collector may by Gazette notice:

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

**15 Continuance of boarding stations, &c.**

All boarding stations, ports, wharfs and examination places in actual use by authority at the commencement of this Ordinance shall continue as if established or appointed under this Ordinance unless otherwise determined by the Chief Collector by Gazette notice.

**16 Accommodation on wharfs**

Every wharf-owner shall provide, to the satisfaction of the Collector, suitable office accommodation on his wharf for the exclusive use of the officer employed at the wharf, and such shed accommodation for the protection of goods as the Chief Collector in writing declares to be requisite.

Penalty: \$400.

**17 Licenses**

Carriages, boats and lighters may be licensed for the carriage of goods subject to the control of the Customs upon payment of such fees and subject to such conditions as are prescribed.

**18 Revocation of licence**

The licence for any carriage, boat, or lighter may be revoked by the Collector if the licensee is guilty of any fraud or misconduct or fails to comply with this Ordinance.

**19            Unlicensed carriages or lighters**

No person shall use any unlicensed carriage, boat or lighter for the conveyance of goods subject to the control of the Customs.

Penalty: \$400.

**20            Before whom declarations may be made**

Declarations under this Ordinance may be made before the Chief Collector or a Collector or a Justice or before any officer authorized in that behalf by the Chief Collector or any Collector.

**21            Declaration by youths**

No person shall knowingly receive a declaration under this Ordinance by any person under the age of eighteen years.

**22            Working days and hours**

The working days and hours of the Customs shall be as prescribed and, except when working overtime is permitted by the Collector, cargo shall only be received, loaded or worked on, or discharged from, any ship on working days and during working hours.

Penalty: \$1,000.

**23            Overtime charges**

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

**PART III – CUSTOMS CONTROL, EXAMINATION, ENTRIES  
AND SECURITIES GENERALLY**

**24            Customs control of goods**

Goods shall be subject to the control of the Customs as follows:

- (a) As to all goods imported — from the time of importation until delivery for home consumption or until exportation to parts beyond the seas whichever first happens;

- (b) As to all goods under drawback — from the time of the claim for drawback until exportation to parts beyond the seas;
- (c) As to all goods subject to any export duty — from the time when the goods are brought to any port or place for exportation until payment of the duty;
- (d) As to all goods for export the exportation of which is subject to compliance with any condition or restriction under any Ordinance or regulation — from the time the goods are made or prepared in, or are brought into, any prescribed place for export until their exportation to parts beyond the seas.

**25 Goods on ships subject to Customs control**

All goods on board any ship or boat from parts beyond the seas shall be subject to the control of the Customs whilst the ship or boat is within the limits of any port in the Territory.

**26 Right of examination**

The control of the Customs especially includes the right of the Customs to examine all goods subject to such control.

**27 Customs control of goods**

No goods subject to the control of the Customs shall be moved, altered or interfered with, except by authority and in accordance with this Ordinance.

Penalty: \$2,000.

**28 No claim for compensation for loss**

The Customs shall not be liable for any loss or damage occasioned to any goods subject to the control of the Customs except by the neglect or wilful act of some officer.

**29 Goods imported through post**

Goods imported through the post-office shall be subject to the control of the Customs in the same manner as goods otherwise imported.

**30 Entries**

Entries may be made and passed for all goods subject to the control of the Customs.

**31 Owner to make entry**

Entries shall be made by the delivery of the entry by the owner to the Collector.

**32 Person making entries to answer questions**

Any person making any entry shall, if required by the Collector, answer questions relating to the goods referred to in the entry.

**33 Collector to pass entries**

Entries shall be passed by the Collector signing the entry and on the passing of the entry the goods shall be deemed to be entered and any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

**34 Goods to be dealt with in accordance with the entry**

All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry.

Penalty: \$1,000.

**35 Passenger luggage**

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

**36 Right to require security**

The Customs shall have the right to require and take securities for compliance with this Ordinance and generally for the protection of the Revenue of the Customs, and, pending the giving of the required security in relation to any goods subject to the control of the Customs, may refuse to deliver the goods or to pass any entry relating thereto.

**37 Security**

Where any security is required to be given the security may be by bond or guarantee or cash deposit or all or any of those methods, as the Collector approves in each case.

**38 General bonds may be given**

When security is required for any particular purpose, security may, by the authority of the Chief Collector, be accepted to cover all transactions for such time and for such amount as the Chief Collector approves.

**39 Cancellation of bonds**

All Customs securities may, after the expiration of three years from the date of the securities or from the time specified for the performance of the conditions of the securities, be cancelled by the Chief Collector.

**40 New securities**

If the Chief Collector is at any time unsatisfied with the sufficiency of any security he may require a fresh security and a fresh security shall be given accordingly.

**41 Forms of Customs security**

The form of Customs security in Schedule I to this Ordinance shall be sufficient for all the purposes of a bond or guarantee under this Ordinance, and, without sealing, shall bind its subscribers as if sealed, and unless otherwise provided therein jointly and severally and for the full amount.

**42 Effect of Customs security**

Whenever any Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment, for their stated liability, against the persons appearing to have executed the security unless the defendants prove compliance with the condition or that the security was not executed by them or release or satisfaction.

## **PART IV – THE IMPORTATION OF GOODS**

### **43 Importation**

For the purpose of securing the due importation of goods:

- (a) The ship may be boarded.
- (b) The cargo shall be reported.
- (c) The goods shall be entered, unshipped and may be examined.

### **Division 1 – Prohibited Imports**

### **44 Importations**

No prohibited imports shall be imported.

Penalty: \$2,000.

### **45 Unregistered ships**

No goods shall be imported in any ship which has not been lawfully registered in the country to which she belongs, or which has not her certificate of registry on board, unless the absence of the certificate is accounted for to the satisfaction of the Collector.

Penalty: \$2,000.

### **46 Prohibited imports**

The following are prohibited imports:

- (b) False money and counterfeit sterling and any coin or money of the King's dominions not being of the established standard in weight or fineness.
- (c) Blasphemous, indecent or obscene works or articles.
- (g) All goods the importation of which are prohibited by proclamation by the Administrator.
- (h) All goods having thereon or therewith any false suggestion of any warranty, guarantee or concern in the production or

quality thereof by any persons, public officials, Government or country.

(j) Opium suitable for smoking.

47 *[Repealed]*

48 *[Repealed]*

49 **Prohibition subject to restriction**

The power of prohibiting importation of goods shall authorize prohibition subject to any specified condition or restriction and goods imported contrary to any such condition or restriction shall be prohibited imports.

50 *[Repealed]*

**Division 2 – The Boarding of Ships**

51 **Ships to enter ports**

The master of a ship shall not, unless from stress of weather or other reasonable cause, suffer his ship to enter any place other than a port.

Penalty: \$2,000.

52 **Ship to bring to on being signalled**

The master of every ship arriving within one league of the coast shall bring his ship in for boarding on being approached by, or hailed or signalled from, any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Territory having hoisted the proper ensign and pendant.

Penalty: \$2,000.

**53 Ship to bring to at boarding station**

The master of every ship from parts beyond the seas, bound to or calling at any port, shall bring his ship to for boarding at the boarding station appointed for that port.

Penalty: \$1,000.

**54 Facility for boarding**

The master of every ship bringing to for boarding shall, by all reasonable means, facilitate boarding by the officer.

Penalty: \$400.

**55 Ships to come quickly to place of unloading**

The master of every ship, after his ship has been brought to at the boarding station and boarded by the officer, shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

Penalty: \$400.

**56 Ship not to be moved without authority**

No ship, after arrival at the proper place of mooring or unloading, shall, except by authority or by direction of the harbour authority, be removed therefrom before the discharge of the cargo intended to be discharged at the port.

Penalty: \$400.

**Division 3 – The Report of the Cargo**

**57 Report of cargo**

The master of every ship arriving from parts beyond the seas shall:

- (a) within one day after arrival at any port make report of the ship and her cargo by delivering to the Collector an Inward Manifest in duplicate of goods for that port;
- (b) answer questions relating to the ship and her cargo, crew, passengers, stores and voyage;



(c) produce documents relating to the ship and her cargo.

Penalty: \$2,000.

**58 Master of wrecked ship to report**

When any ship is lost or wrecked upon the coast the master or owner shall, as soon as practicable, make report of the ship and cargo by delivering to the Collector a Manifest, so far as it is possible for him to do so, at the Customs House nearest to the place where the ship was lost or wrecked or at the Chief Customs House of the Territory.

Penalty: \$400.

**59 Goods derelict to be delivered to officer**

Whoever has any dutiable goods, derelict, flotsam, jetsam, lagan or wreck in his possession shall, as soon as practicable, deliver them or it to an officer.

Penalty: \$400.

**60 Interference with derelict goods**

No person shall except by authority unnecessarily move, alter or interfere with any goods, derelict, flotsam, jetsam, lagan or wreck.

Penalty: \$400.

**Division 4 – The Entry, Unshipment, Landing and Examination of Goods**

**61 Entries**

All imported goods shall be entered either:

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

**62 Sight entry**

If the owner cannot immediately supply the full particulars for making an entry and makes a declaration to that effect before the Collector, he may make a sight entry.

**63 Passing of sight entry**

A sight entry on being passed by the Collector shall be warrant for the landing and examination of the goods.

**64 Completion of sight entry**

- (1) The owner of the goods included in a sight entry shall, within seven days after the passing of the entry, make complete entry thereof.
- (2) A complete entry of the goods included in a sight entry shall be made in the same manner as if the sight entry had not been made.

**65 Entry within seven days**

- (1) Entries shall be made of the whole of any cargo unshipped or to be unshipped within such respective times after the report of the ship as is prescribed or within such further time if any as the Collector allows; and, if the goods are placed in quarantine, seven days at the least shall be allowed for entry after their release from quarantine.
- (2) If default is made in the entry of any goods pursuant to this section, the Collector may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within six months after such removal, the goods may be sold by the Collector.
- (3) If the goods are of a perishable nature they may be sold at any time, either before or after warehousing, the Collector thinks fit.

**66 Breaking bulk**

The bulk cargo of a ship arriving within one league of the coast shall not be broken except with the permission of the Collector or as regards goods for which entry has been passed.

Penalty: \$2,000.

**67 Authority for unshipment**

Except as prescribed goods may be unshipped only pursuant to:

- (a) a Collector's permit; or
- (b) an entry passed.

Penalty: \$2,000.

**68 Unshipment of goods**

All goods unshipped shall be either:

- (a) landed at a wharf, either directly or after conveyance to the wharf in a licensed boat or lighter from the ship; or
- (b) transhipped to the ship into which they are to be transhipped either directly or after conveyance to that ship in a licensed carriage, boat or lighter direct from the ship from which they were unshipped.

**69 Goods landed on permit at ship's risk**

Goods unshipped and landed under a Collector's permit shall be placed by, and at the expense of, the master or owner of the ship from which they were unshipped, in a place of security approved by the Collector and shall, until lawfully removed from that place, be at the risk of the master or owner of the ship as if they had not been unshipped.

**70 Repacking on wharf**

Any goods may by authority be repacked or skipped on the wharf.

## **PART V – THE WAREHOUSING OF GOODS**

### **Division 1 – Licensed Warehouses**

**71 Dutiable goods may be warehoused**

Dutiable goods may be warehoused in warehouses licensed by the Chief Collector.

**72 Classes of warehouses**

There may be two classes of licensed warehouses as follows:

Class I — General warehouses to be used for warehousing goods generally.

Class II — Private warehouses to be used only for warehousing goods the property of the licensee.

**73 Annual fee**

Fees for warehouses shall be according to the scale in Schedule II and shall be paid by the licensee — as to the annual fees, by equal quarterly payments in advance on the first days of January, April, July, and October in each year and, as to the fees for locker's attendance, by monthly payments.

**74 Cancellation of licences**

In default of payment of any part of any licence-fee for thirty days after any quarter day the Chief Collector may by Gazette notice, cancel the licence and thereupon the warehouse shall be closed and the goods therein shall be removed by the Collector to some other warehouse.

**75 Officer to take account of goods landed to be warehoused**

- (1) Upon the landing of any goods to be warehoused, or so soon as practicable after landing, the officer shall take a particular account of the goods and shall enter the account in a book.
- (2) Subject to this Ordinance, the account shall be that upon which the duties shall be ascertained and paid.

**76 Completion of warehousing**

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

**77 Removal of goods to warehouse**

- (1) If any goods entered to be warehoused are not warehoused accordingly by the owner the Collector may remove them to a warehouse.

- (2) The licensee of the warehouse shall pay all charges for the removal of goods removed by the Collector and shall have a lien on the goods for those charges.

**78 Packages in which goods to be deposited**

Goods entered for warehousing shall be warehoused in the packages in which they were imported, except goods repacked or skipped on the wharf, which shall be warehoused in the packages in which they were when the account was taken.

**79 Repacking to warehouse**

The Collector may, as prescribed, permit the owner to sort, bottle, pack or repack goods in any warehouse.

**80 Fresh account to be taken**

Whenever goods are sorted, bottled, packed or repacked in a warehouse, a fresh account of the goods shall be taken by the officer and shall be substituted for the original account.

**81 Refining methylated spirits**

No person shall treat, refine or distil any methylated spirit for the purpose of rendering it fit for human use as a beverage or shall sell or offer for sale any methylated spirit so treated, refined or distilled or sell or offer for sale for human use as a food or beverage any goods containing methylated spirits.

Penalty: \$2,000.

**82 Duty of licensee**

The licensee of every warehouse shall:

- (a) stack and arrange the goods in the warehouse so that reasonable access to, and examination of, every package may be had at all times;
- (b) provide sufficient lights and just scales and weights for the use of the officer;
- (c) find all labour and materials requisite for the storing, examining, packing, marking, coopering, weighing and

taking stock of the warehoused goods whenever the Collector desires;

- (d) pay the duty on all warehoused goods removed from his warehouse except by authority, and on all warehoused goods not produced to the officer on demand, unless such goods are accounted for to the satisfaction of the Collector.

Penalty: \$400.

**83 Opening warehouse**

No person shall, except by authority, open any warehouse or gain access to the goods in the warehouse.

Penalty: \$400.

**84 Collector may order removal of goods from private to public warehouse**

The Collector may require the owner of any goods in any private warehouse, within a time specified by the Collector, to remove them to some general warehouse or to pay the duty thereon, and if the order is not complied with the goods may be sold by the Collector.

**85 Period of warehousing**

Goods warehoused in any warehouse for one year shall, if not removed therefrom or re-warehoused, be sold by the Collector.

**86 Re-warehousing**

Re-warehousing shall be effected as follows:

- (a) An application for re-warehousing shall be made by the owner to the Collector.
- (b) The goods shall be examined by the officer at the expense of the owner.
- (c) Duty shall be paid on any disallowed deficiency.
- (d) A re-warehousing entry shall be made by the owner for the goods according to the result of the examination.

- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the re-warehousing.

**87 Collector to have access to warehouse**

The Collector shall, at all hours of the day and night, have access to every part of any warehouse and power to examine the goods therein, and for that purpose may break open the warehouse or any premises necessary to be passed through to secure access.

**88 Re-gauging or re-weighing of goods**

Warehoused goods may be re-gauged, re-measured, re-weighed or examined by the officer, either by direction of the Collector or at the request and expense of the owner, and duty shall be payable according to the result, unless the Collector is of the opinion that any loss shown is excessive, in which case the duty shall be paid on the original entry with any reduction which the Collector sees fit to allow.

**89 Re-valuation**

Warehoused goods which are subject to an *ad valorem* duty and which 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.

**90 If warehouse fees in arrear goods to be sold**

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

**91 Goods not worth duty may be destroyed**

- (1) The Chief Collector may cause any warehoused goods which, in the opinion of the Collector, are not worth the duty payable thereon to be destroyed and may remit the duty.
- (2) The owner of any goods destroyed shall pay to the licensee of the warehouse, or to the Collector in case the goods were in a King's warehouse, the rent and charges payable in respect of the destroyed goods.

**92 Combustible or inflammable goods**

No goods of a combustible or inflammable nature shall be warehoused except by permission of the Collector, and if any such goods are landed they may be deposited in any safe available place that the Collector approves, and while so deposited the goods shall be deemed to be in a King's warehouse, and shall be liable to be sold by the Collector at the expiration of fourteen days in the same manner as goods of a perishable nature deposited in a King's warehouse, unless duly cleared or warehoused in some warehouse with the approval of the Collector, and the goods shall be charged with the expenses of removing, securing, watching and guarding until sold.

Penalty: \$2,000.

**93 Entry of warehoused goods**

Warehoused goods may be entered:

- (a) for home consumption;
- (b) for export to parts beyond the seas;
- (c) for removal for warehousing elsewhere.

**94 Constructive warehousing**

If after goods have been entered for warehousing, either on importation or removal, and before they have been actually warehoused, they are entered for home consumption, exportation or removal, the goods so entered shall be considered as constructively warehoused and may be delivered for home consumption, exportation or removal as if actually warehoused.

**Division 2 – King's Warehouses**

**95 King's Warehouses**

King's warehouses may be appointed by the Chief Collector by Gazette notice.



**96 Rent**

Rent and charges shall be paid in respect of any goods warehoused in any King's warehouse according to such scale as is prescribed.

**97 Continuation of existing warehouses**

King's warehouses in actual use by authority at the commencement of this Ordinance shall continue as if appointed under this Ordinance unless otherwise determined by the Chief Collector by Gazette notice.

**98 Power to sell**

If any goods warehoused in a King's warehouse are not lawfully removed within six months after warehousing, the goods may be sold by the Collector.

**99 Purposes of King's warehouses**

King's warehouses shall be wholly under the control of the Customs, and shall be specially available for the examination of goods and the storage of seized and unclaimed goods, but otherwise all the provisions of this Ordinance relating to warehouses shall, so far as practicable, apply to King's warehouses.

**PART VI – THE EXPORTATION OF GOODS**

**100 Exportation**

No prohibited exports shall be exported.

Penalty: \$2,000.

**101 Prohibited exports**

- (1) The Administrator may by proclamation prohibit the exportation of any goods:
  - (a) being arms, explosives, military stores or naval stores or being goods which, in his opinion, are capable of being used as, or in the manufacture of, arms, explosives, military stores or naval stores or for any purpose of war; or

- (b) the exportation of which would in his opinion be harmful to the Territory; or
  - (c) the prohibition of the exportation of which is in his opinion necessary for the preservation of the flora or fauna of the Territory; or
  - (d) which have not been prepared or manufactured for export under the prescribed conditions as to purity, soundness or freedom from disease or which do not conform to the prescribed conditions as to purity, soundness or freedom from disease; or
  - (e) the prohibition of the exportation of which is in his opinion necessary for the protection of the revenue or the prevention of fraud or deception.
- (2) The power contained in sub-section (1.) of this section shall extend to authorize the prohibition of the exportation of goods generally or to any specified place, and either absolutely or so as to allow of the exportation of the goods subject to any condition or restriction.
- (3) All goods the exportation of which is prohibited shall be prohibited exports to the extent to which the prohibition extends.

**102      Size of exporting vessel**

Except by the permission of the Collector, no goods subject to the control of the Customs shall be exported in any ship of less than fifty tons gross register.

Penalty: \$2,000.

**103      Conditions of export**

- (1) Subject to this section a ship shall be entered outwards and the goods proposed to be exported on the ship shall be entered for export before any of those goods are taken on board the ship.
- (2) Free goods may be entered not later than three days after shipment.
- (3) A ship may, by permission of the Collector, be stiffened before entry outwards or export entry.

**104 Goods to be shipped at wharf**

Goods subject to the control of the Customs for exportation or removal coastwise shall be shipped, either directly at a wharf, or after conveyance to the ship in a licensed boat or lighter direct from a wharf.

Penalty: \$2,000.

**105 Short shipped goods**

If any goods entered for export are not shipped according to the entry:

- (a) the owner shall immediately report the fact to the officer and amend his entry for the goods not later than three days after the clearance of the ship; and
- (b) the goods, if dutiable, shall forthwith be warehoused.

Penalty: \$400.

**106 Documents and security**

The Collector may require the owner to produce documents for any goods entered for export and, in the case of goods subject to the control of the Customs, to give security that they will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Collector.

**107 Certificate of Clearance**

The master of any ship shall not depart with his ship from any port without receiving from the Collector a Certificate of Clearance.

Penalty: \$2,000.

**108 Requisition for obtaining clearance**

Before any Certificate of Clearance is granted the master of the ship shall:

- (a) deliver to the Collector an Outward Manifest in duplicate;
- (b) answer questions relating to the ship and her cargo, crew, passengers, stores and voyage;

- (c) produce documents relating to the ship and her cargo.

**109 Shipment of unspecified goods**

The master of a ship shall not suffer any goods, other than passengers' baggage, not specified or referred to in the Outward Manifest to be taken on board his ship except as provided in section one hundred and three.

Penalty: \$1,000.

**110 Manifest to be attached to clearance**

A copy of the Outward Manifest shall be attached to the Certificate of Clearance and shall be sealed with the Customs seal.

**111 Time of clearance**

No Certificate of Clearance shall be granted for any ship unless all her inward cargo and stores shall have been duly accounted for to the satisfaction of the Collector, nor unless all the other requirements of the law in regard to the ship and her inward and outward cargo have been duly complied with.

**112 Ship to bring to at proper stations**

The master of every ship departing from any port shall bring his ship to at the boarding station appointed for the port, and, by all reasonable means, facilitate boarding by the officer, and shall not depart with his ship from any port with any officer on board the ship in the discharge of his duty without the consent of the officer.

Penalty: \$2,000.

**113 Master to account for missing goods**

The master of every ship shall after the clearance of the ship:

- (a) on demand by an officer, produce the Certificate of Clearance;

- (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.

Penalty: \$1,000.

**114 Goods exported to be landed at proper destination**

No goods shipped for export shall be unshipped or landed without the permission of the Collector except in parts beyond the seas.

Penalty: \$1,000.

**115 Certificate of landing**

If required by the Chief Collector a certificate in such form and to be given by such person, as is prescribed, shall be produced in proof of the due landing, according to the export entry, of any goods subject to the control of the Customs and the Collector may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce the certificate of the landing of any of the goods previously exported by him or to account for the goods to the satisfaction of the Collector.

**PART VII – SHIPS’ STORES**

**116 Use of ships’ stores**

Ships’ stores, whether shipped in parts beyond the seas or in the Territory shall, unless entered for home consumption or except as prescribed, only be used by the passengers and crew and for the service of the ship and after the departure of the ship from her last port of departure in the Territory.

**117 Re-landing ships’ stores**

No ships’ stores shall be used contrary to the last preceding section, or unshipped, except by permission of the Collector.

Penalty: \$1,000.

**118      Ships' stores**

The prescribed allowance of ships' stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than fifty tons gross registered tonnage entered outwards for parts beyond the seas.

**PART VIII – THE DUTIES**

**Division 1 – The Payment and Computation of Duties Generally**

**119      Exemption from duty**

- (1) A person is liable to pay duty under this Act unless exempt under this section.
- (2) A person may be exempt from the requirement to pay duty by Cabinet by:
  - (a) regulation; or
  - (b) written agreement, whether or not the person exempt is a party to the agreement; or
  - (c) written Cabinet decision.
- (3) A register must be kept by the Chief Collector of Customs including a record of each exemption made by written agreement or Cabinet decision.

**120      Payment of import duties**

All import duties on goods shall be paid:

- (a) at the rate in force when the goods enter Nauru; and
- (b) unless the regulations provide otherwise – before delivery of the goods to the owner of the goods.

**121      Export duties**

All export duties shall be 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.

**122 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 by law established.

**123 Proportion**

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

**124 Duty, how fixed**

Whenever 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 such first-mentioned size or quantity.

**125 British currency**

All duties shall be paid in British currency.

**126 Highest duties to be charged**

If any goods enumerated in the Tariff are, or can be, classed under two or more names, headings or descriptions with a resulting difference as to duty, duty shall be charged when it is a difference between liability to, or freedom from, duty, and the higher or highest of the duties applicable shall be charged when it is a difference as to two or more duties.

**127 Substitutes for dutiable goods**

Whenever any goods are imported which, in the opinion of the Chief Collector are a substitute for any dutiable goods, or are intended to be, or can be, used as such substitute or for any purpose for which the dutiable goods can be used, or for any similar purpose, the Chief Collector may, by Gazette notice, direct that the first-mentioned goods shall be charged with the duty chargeable upon the dutiable goods, and the duty shall be so charged accordingly.

**128 Duty on parts**

- (1) Whenever any dutiable goods are composed of two or more separate parts, any part, though imported by itself, shall if so directed by the Chief Collector be chargeable with duty at the rate applicable to the complete goods.
- (2) When the duty on the complete goods is specific, or both specific and *ad valorem*, the Chief Collector may fix the proportionate rate of duty with which any part is chargeable.

**129 Duty as 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 such essences, condensations, concentrations or preparations can be converted, according to a standard to be prescribed.

**130 Measurement for duty**

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; and in all cases where the goods are measured in bulk, the measurement shall be taken to the full extent of the heap or pile.

**131 Goods in transit**

Goods exported to the Territory from any country, but passing through another country, shall be valued for duty as if they were imported directly from the first-mentioned country.

**132 Value of goods sold**

When the duty on any goods sold at any Collector's sale is *ad valorem*, the value of the goods shall, if approved by the Collector, be taken to be the value as shown by the sale.

**133 Strength of spirits**

The strength of spirits may be ascertained for the purposes of duty by the means of a hydrometer approved by the Chief Collector.



**134      Obscuration**

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.

**135      Derelict goods dutiable**

All goods, derelict, flotsam, jetsam or lagan, or landed, saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

**136      As to payment of duty on goods in manifest but not produced or landed**

If any dutiable goods which are included in the report of any ship are not produced to the officer, the master or owner of the ship 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.

**137      Samples**

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.

**138      Samples**

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

**139      Alteration of agreements where duty altered**

If, after any agreement is made for the sale or delivery of goods duty paid, any alteration takes place in the duty collected affecting the goods before they are entered for home consumption, then, in the absence of express written provision to the contrary, the agreement shall be altered as follows:

- (a) in the event of an alteration being a new or increased duty, the seller, after payment of the new or increased

duty, may add the difference caused by the alteration to the agreed price;

- (b) in the event of the alteration being the abolition or reduction of duty, the purchaser may deduct the difference caused by the alteration from the agreed price;
- (c) any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case requires.

#### **140 Recovery of duties**

All duties shall constitute Crown debts, charged upon the goods in respect of which the duties are payable, and payable by the owner of the goods, and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector.

### **Division 2 – ‘Ad Valorem’ Duties**

#### **141 Value for duty**

When any duty is imposed according to value:

- (a) the value shall be taken to be the fair market value of the goods in the principal markets of the country whence they were exported in the usual and ordinary commercial acceptation of the term and free on board at the port of export in that country and a further addition of five per cent. on such market value;<sup>4</sup>
- (b) the value shall be verified at the time of entry by the production of the genuine invoice and by a declaration signed by the owner in the presence of the Collector;
- (c) the invoice shall be stamped by the Collector with the Customs stamp, and shall be produced to the officer prior to the delivery of the goods for home consumption or for warehousing;
- (d) if the non-production of the genuine invoice is accounted for to the satisfaction of the Collector, proof of its contents,

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<sup>4</sup> See now, s.4 of the Law Adoption (*Customs*) Act 1922 and s.8 of the *Customs (Rates of Duty) Act 2010*.

by a copy or otherwise, may be received in lieu of its production.

**142 Genuine invoice**

The genuine invoice means:

- (a) the original invoice prepared and issued by the seller in the country whence the goods were exported, showing the true description of the goods and the actual money price paid, or to be paid, for the goods by the purchaser in the country whence they were exported without any deduction; or
- (b) in the case of goods consigned for sale in the Territory the original invoice prepared and issued by the consignor, showing the true description of the goods and the actual money price for cash at which the goods were available in the principal markets of the country whence the goods were exported, at the date of the shipment of the goods free on board at the port of export in that country.

**143 Substituted invoice**

If the original invoice prepared and issued by the seller or consignor in the country whence the goods were exported cannot conveniently be obtained, the Collector may permit to be substituted the original invoice prepared and issued by the last seller or consignor, and the invoice so substituted shall be deemed the genuine invoice, but so that:

- (a) the Collector shall first be satisfied that the value shown by the invoice of the last seller or consignor is not less than the fair market value in the country of export ascertained according to section one hundred and forty-one;
- (b) the value shown by the invoice shall, for the purpose of duty, be taken to be the fair market value of the goods in the country of export, ascertained according to section one hundred and forty-one.

**144 Foreign invoices**

Where the genuine invoice shows the value of the goods in any currency other than British currency, the equivalent value of the goods in British currency shall be ascertained according to a fair

rate of exchange to be declared in case of doubt by the Chief Collector.

**145 Value may be assessed**

- (1) Whenever the Collector has a doubt as to the accuracy of the declared value of dutiable goods, he may detain the goods and assess the value thereof.
- (2) Should the owner object to the value so assessed he may request that the value may be ascertained by experts in manner prescribed.
- (3) Should the owner refuse to pay the duty as assessed by the Collector or ascertained by experts the Collector may sell the goods.
- (4) The provisions of this section shall not apply in cases where the Chief Collector is of opinion that any evasion of this Ordinance has been committed or attempted.

**146 Blank invoices**

No person shall send or bring into the Territory or have in his possession, without reasonable excuse, any blank, or partly blank, invoice form capable of being filled up and used as a genuine invoice.

Penalty: \$2,000.

**147 Chief Collector to determine value in some cases**

Whenever it is difficult to determine the value of goods for duty, either because the goods are not sold for use or consumption in the country of production, or because a lease of the goods or the right of using them is sold or given but not the right of property therein, or because the goods have a royalty imposed upon them and the royalty is uncertain or is not a reliable means of estimating the value of the goods, or because the goods are usually or exclusively sold by or to agents, or by subscription, or are sold or imported in, or under, any other unusual or peculiar manner or conditions (of all which matters the Chief Collector shall be judge) the Chief Collector may determine the value for duty of the goods.

**148 Customs may take goods on paying declared value plus ten per cent**

For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duties, any goods entered as of 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, and subject as so prescribed, be purchased by the Customs at their declared value with an addition of Ten pounds per centum on the amount of that value.

- (2) The purchase shall be effected by the seizure of the goods by an officer and written notice of the seizure given to the owner.
- (3) The officer shall remove the goods to a warehouse or some place of security and the owner shall thereupon be entitled to the purchase money.
- (4) The goods shall become the property of the King immediately on seizure and shall afterwards 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 shall not limit or restrict any other power possessed by the Customs relating to the goods.

**Division 3 – Deposits, Abatements, Remissions and Refunds of Duties**

**149 Deposits**

In prescribed cases the duty paid on any goods may be retained by the Customs on deposit for a period not exceeding six months, and the deposit may be returned to the owner if the goods are exported within the prescribed time.

**150 Refund of duty**

- (a) Whenever goods:
  - (i) have received damage or have been pillaged during the voyage;
  - (ii) have, whilst under Customs control, been damaged, pillaged or destroyed; or

- (b) Whenever duty has been paid through manifest error of fact or patent misconception of the law;

a refund, rebate or remission of the duty as the case requires shall be made in the manner prescribed.

**151 Duty on waste**

The Collector may remit any duty on any goods that have been wasted or lost in sorting, bottling, packing or repacking in a warehouse.

**152 Short-paid duty may be recovered**

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 erroneously refunded on demand being made by the Collector within twelve months from the date of the short levy or refund.

**153 No refund if duty altered**

If any practice of the Customs relating to classifying or enumerating any article for duty is altered so that less duty is charged upon that article, no person shall thereby become entitled to any refund on account of any duty paid before the alteration.

**Division 4 – Disputes as to Duty**

**154 Duty paid to be deemed proper duty unless paid under protest**

- (1) If any dispute arises as to the amount or rate of duty payable in respect to any goods, or as to 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, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in an action brought in pursuance of this section.
- (2) The owner may within the time limited in this section bring an action against the Collector in any court of competent

jurisdiction in the Territory for the recovery of the whole or any part of the sum so paid.

- (3) A protest in pursuance of this section shall be made by writing on the entry of the goods the words 'Paid under protest' and adding the signature of the owner of the goods or his agent.
- (4) No action shall lie for the recovery of any sum paid to the Customs, as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced, in case the sum is paid as the duty payable under any Customs Tariff, within six months after the date of payment.
- (5) Nothing in this section shall affect any rights or powers under section one hundred and fifty of this Ordinance.

## **PART IX – DRAWBACKS**

### **155 Drawbacks allowed**

Drawbacks of import duty may be allowed on exportation in respect of such goods (other than spirits, wine, beer, tobacco, cigars and cigarettes) to such amount and in such manner as is prescribed.

### **156 Limit of value**

No drawback shall be allowed on any goods of a less value for home consumption than the amount of the drawback, or on which the import duty paid did not amount to One pound.

### **157 Examination of goods under drawback**

All goods in respect of which any claim for drawback is made shall, before exportation, be produced for examination by the Customs and shall be examined accordingly.

### **158 Debenture to be passed**

For the purpose of claiming drawback, a drawback debenture shall be presented to the Collector who shall, as soon as the goods have been exported, cause the debenture to be passed for payment.

**159 Declaration on debenture**

The person claiming drawback on any goods shall make a declaration upon the debenture that the goods have been exported and have not been re-landed and are not intended to be re-landed, and that he, at the time of shipping, was entitled to the drawback and the name of that person shall be stated in the debenture, and the receipt of that person on the debenture, countersigned by the holder of such debenture if the same has been transferred in the meantime, shall be a sufficient discharge for the drawback.

**160 Payment of drawback debentures**

- (1) No drawback debenture shall be paid except with the consent of the Chief Collector, or unless presented for payment within one year from the date of the shipment of the goods for export.
- (2) The Chief Collector may prohibit the payment, in whole or in part, of any drawback debenture, but so as not to deprive the person entitled thereto of any remedy he may have for the drawback.

**PART X – THE COASTING TRADE**

**161 What are coasting vessels**

All ships trading, plying or going from one port or place in the Territory to another port or place therein, and not trading, plying or going to any other port or place, shall be deemed to be engaged in the coasting trade and those ships shall be deemed to be coasting ships for the purposes of any Customs Ordinance.

**162 Coasters not to take in cargo at sea or deviate**

The master of a coasting ship shall not suffer any goods to be taken into, or put out of, his ship from, or into, any other ship at sea, except with the sanction of the Collector, nor suffer his ship to deviate from her voyage, unless forced to do so by unavoidable circumstances, or under circumstances explained to the satisfaction of the Collector.

Penalty: \$2,000.



**163 Owner may report ship**

- (1) The owner of any ship employed in the coasting trade may, with the consent of the Collector, report the ship inwards or outwards in lieu of the master of the ship.
- (2) Every owner so reporting shall be subject to the same provisions, and liable to the same penalties, under the Customs Ordinance as the master of the ship.

**164 Account of goods of Territory**

The master or owner of every coasting ship shall, at prescribed ports, deliver to the Collector, as prescribed, particulars of all cargo consisting of produce or manufactures of the Territory then on board his ship.

**165 Regulation**

The coasting trade generally, as regards the Customs, shall be regulated in manner prescribed and books shall be kept, documents produced, and entries made accordingly.

## **PART XI – AGENTS**

**166 Authorized agents**

The owner of any goods may comply with the provisions of this Ordinance by an agent lawfully authorized, and, in all places to which this limitation is declared by proclamation to extend, the agent shall be either a person exclusively in the employment of the owner, or shall be a Customs agent duly licensed in manner prescribed.

**167 Authority to be produced**

Any officer may require from any agent the production of his written authority from the principal for whom he claims to act, and, in default of the production of the authority, may refuse to recognise the agency.

**168 Agents personally liable**

When any person is expressly or impliedly authorized by the owner to act as his agent in relation to any goods for all or any

purposes of any Customs Ordinance, or represents or passes himself or acts or assumes to act as such agent the person shall, for those purposes, be also deemed to be the owner of the goods, and shall be personally liable for any penalties recoverable under this Ordinance in the same manner and to the same extent as if he were principal, but nothing herein contained shall be taken to relieve any principal from liability.

**169 Principal liable for agents acting**

Any declaration authorized by this Ordinance, made by the agent of any person, shall be held to have been made with the knowledge and consent of that person, so that in any prosecution in respect of any declaration made by the agent the person shall be liable only to the pecuniary punishment provided by any Customs Ordinance as if the declaration had been made by himself.

## **PART XII – OFFICERS**

### **Division 1 – Powers of Officers**

**170 Ships and boats to bring to**

The commander or officer in charge of any ship or boat in His Majesty's service or in the service of the Commonwealth or the Territory or Customs may when that ship or boat has hoisted and is carrying the proper ensign and pendant or Customs flag, chase any ship which does not bring to when lawfully signalled or required to do so and may (after having fired a gun as a signal) fire at or into such ship to compel her to bring to.

**171 Officers may board ships hovering on coast**

- (1) Any officer may require the master of any ship, hovering within one league of the coast, to depart, and if that ship fails to depart accordingly within twelve hours thereafter, any officer may board and bring the ship into port and search her.
- (2) The Collector may examine all persons on board of the ship and those persons shall thereupon answer questions relating to the ship and her cargo, crew, passengers, stores and voyage, and produce documents relating to the ship and her cargo.

Penalty: \$2,000.

**172 Examine all goods**

Any officer may open packages and examine, weigh, mark and seal any goods subject to the control of the Customs, and the expense of the examination shall be borne by the owner.

**173 Power to board and search ships**

Any officer may:

- (a) board any ship;
- (b) search any ship;
- (c) secure any goods on any ship.

**174 Boarding**

The power of an officer to board shall extend to staying on board any ship, and the Collector may station an officer on board any ship and the master shall provide sleeping accommodation in the cabin and suitable and sufficient food for the officer.

Penalty: \$1,000.

**175 Searching**

The power of an officer to search shall extend to every part of any ship and shall authorize the opening of any package, locker or place and the examination of all goods.

**176 Securing goods**

The power of an officer to secure any goods shall extend to fastening down hatchways, and other openings into the hold and locking up, sealing, marking or otherwise securing; any goods or the removal of any goods to the King's Warehouse.

**177        Seals, &c., not to be broken**

No fastening, lock, mark or seal placed by an officer upon any goods, or upon any door, hatchway, opening or place upon any ship, shall be opened, altered, broken or erased, except by authority, whilst the goods upon which the fastening, lock, mark or seal is placed, or which are intended to be secured thereby, remain subject to the control of the Customs.

Penalty: \$1,000.

**178        Or on vessels in port bound to another port within the territory**

No fastening, lock, mark or seal, placed by an officer upon any goods, or upon any door, hatchway, opening or place for the purpose of securing any stores upon any ship which has arrived in any port from parts beyond the seas, and which is bound to any other port within the Territory, shall be opened, altered, broken or erased, except by authority, and if any ship enters any port with any such fastening, lock, mark or seal opened, altered, broken or erased, contrary to this section, the master shall be guilty of an offence against this Ordinance.

Penalty: \$2,000.

**179        Officers may patrol coasts. &c.**

Any officer, and any person acting in his aid, when on duty, may patrol upon, and pass freely along and over, any part of the coast, or the shores, banks or beaches of any port, bay, harbour, lake or river.

**180        Boats on service may be moored in any place**

The officer in charge for the time being of any vessel or boat employed in the service of the Customs, may haul the vessel or boat upon any part of the coast, or the shores, banks or beaches of any part, bay, harbour, lake or river, and may moor the vessel or boat thereon, and continue the vessel or boat so moored for such time as he deems necessary.

**181        Power to question passengers**

Any person on board any ship or boat, or who has landed from or got out of any ship or boat, may be questioned by any officer as to whether he has any dutiable goods or prohibited imports

or prohibited exports upon his person or in his possession or in his baggage.

**182 Suspected persons, detection search**

- (1) If any officer of Customs or of Police has reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs or any prohibited imports or prohibited exports secreted about him, the following consequences shall ensue:
  - (a) the officer may detain and search the suspected person;
  - (b) before the suspected person is searched, he may require to be taken before a Justice or the Collector;
  - (c) the Justice or Collector may order the suspected person to be searched or may discharge him without search.
- (2) Females shall be searched only by a female searcher appointed by the Justice or Collector.

**183 Power to stop vehicles**

Any officer of Customs or Police, upon reasonable suspicion, may stop and search any carriage for the purpose of ascertaining whether any dutiable goods are contained therein, and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty: \$400.

**184 Writs of assistance**

The Chief Judicial Officer of the Territory or any Justice of the Supreme Court of the Territory may grant a Writ of Assistance in the form of Schedule III to this Ordinance upon application made to him for that purpose by the Chief Collector or by the Collector, and the writ shall unless superseded be in force so long as any person named therein remains an officer of Customs whether in the same capacity or not.

**185 Customs warrants**

The Chief Collector or the Collector may grant a Customs Warrant in the form of Schedule IV to this Ordinance under the

Customs Seal to any officer and the warrant shall remain in force for three months from the date thereof.

**186 Power to search**

Any officer having with him a Writ of Assistance or a Customs Warrant may, at any time in the day or night, enter into and search any house, premises or place, and may break open the same and search any chests, trunks or packages in which goods may be or are supposed to be.

**187 Power to take assistants**

Any officer acting under a Writ of Assistance or Customs Warrant may take with him, and have the assistance of, any police officer and such assistants as he thinks necessary.

**188 Power to call for aid**

Any person lawfully making any seizure under any Customs Ordinance may call upon any person present in the King's name to assist him and such assistance shall be rendered accordingly.

Penalty: \$400.

**189 Power to seize goods**

Any officer of His Majesty's forces or any officer of Customs or Police may seize any forfeited ship or goods upon land or water or any ship or goods which he has reasonable cause to believe are forfeited.

**190 Seized goods to be secured**

All seized goods shall be taken to the nearest King's warehouse or to such other place of security as the Collector directs.

**191 Notice to be given of goods seized**

When any ship, boat or goods have been seized as forfeited, the seizing officer, shall give notice in writing of the seizure, and the cause thereof to the master or owner of the ship, boat or goods (unless the master or owner be present at the seizure in which case no notice shall be necessary) either by delivering the notice to him personally or by letter addressed to him and

transmitted by post to or delivered at his last known place of abode or business, and any ship, boat or goods seized shall be deemed to be condemned, and may be sold by the Collector, unless the person from whom the ship, boat or goods are seized or the owner, within one month from the date of seizure, gives notice in writing to the Collector at the nearest port, that he claims the ship, boat or goods, but if any goods so seized are of a perishable nature or are live animals they may be forthwith sold by the Collector.

**192 Seized goods may be returned on security**

The Chief Collector or the Collector may authorize any ship, boat or goods seized to be delivered to the claimant on his giving security to pay their value in case of their condemnation.

**193 Collector may retain goods and require owner to proceed for restoration**

Whenever any goods have been seized by any officer and claim to the goods has been served on the Collector by the owner of the goods, the Collector may retain possession of the goods without taking any proceedings for their condemnation, and may, by notice under his hand, require the claimant to enter an action against him for the recovery of the goods, and if the claimant does not, within four months after the date of the notice, enter the action, the goods shall be deemed to be condemned without any further proceedings.

**194 Disposal of forfeited ships and goods**

All forfeited ships and goods shall be disposed of or destroyed in such manner as is prescribed or as the Chief Collector may direct.

**195 Delivery of seized goods**

All goods seized by any person not being a Customs Officer shall forthwith be conveyed to the nearest Customs house and there delivered to an officer.

**196 Arrest of persons suspected of smuggling, &c.**

- (1) Any officer of Customs or Police may, without warrant arrest any person who, he has reasonable ground to believe, is guilty of

committing or attempting to commit, or of being concerned in the commission of any of the following offences:

- (a) smuggling;
  - (b) importing any prohibited imports;
  - (c) exporting any prohibited exports; or
  - (d) unlawfully conveying or having in his possession any smuggled goods, prohibited imports or prohibited exports.
- (2) No person shall resist, obstruct or prevent the arrest of any person in pursuance of this section.

Penalty: \$400.

**197 Reasons for arrests**

Any officer arresting any person shall, as soon as practicable after arrest, give him a statement in writing of the reason for his arrest.

**198 Arrested persons to go before Justices**

Every person arrested may be detained until such time as he can, without undue delay, be taken before a Justice.

**199 Powers of Justices with offenders**

Any Justice before whom any person is brought under this Ordinance may:

- (a) commit the person to gaol until he can be brought before Justices to be dealt with according to law; or
- (b) admit him to bail upon his giving sufficient security for his appearance before Justices at the time and place appointed for the hearing of the charge.

**200 Production of documents, &c., in cases of seizure**

Whenever information in writing has been given on oath to the Collector that goods have been unlawfully imported, undervalued, or entered or illegally dealt with, or that it is intended to unlawfully import, undervalue, enter or illegally deal with any goods, or whenever any goods have been seized or



detained, the owner shall, immediately upon being required so to do by the Collector, produce and hand over to him all books and documents relating to the goods so imported, entered, seized or detained, undervalued or illegally dealt with or intended to be unlawfully imported, undervalued, entered or illegally dealt with, and of all other goods imported by him at any time within the period of five years immediately preceding the request, seizure or detention and shall also produce for the inspection of the Collector or such other officer as is authorized by the Collector for that purpose and allow the Collector or officer to make copies of or extracts from all books or documents of any kind whatsoever, wherein any entry or memorandum appears in any way relating to the goods.

Penalty: \$2,000.

**201 Collector may impound documents**

The Collector may impound or retain any document presented in connexion with any entry or required to be produced under this Ordinance and the person otherwise entitled to the document shall, in lieu thereof, be entitled to a copy certified as correct by the Collector and the certified copy shall be received in all courts as evidence and of equal validity with the original.

**202 Collector may require further proof of proper entry**

The Collector may require from the owner of any goods proof, by declaration or the production of documents, that the goods are owned as claimed and are properly described, valued or rated for duty, and the Collector may refuse to deliver the goods or to pass any entry relating thereto pending the receipt of the proof.

**203 Translations of foreign invoices**

If any document in a foreign language be presented to any officer for any purpose connected with Customs business, the Collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the Collector approves or to be verified as he requires.

**204 Customs samples**

Samples of any goods under the control of the Customs may, for any purpose deemed necessary by the Collector, be taken, utilized and disposed of by any officer in manner prescribed.

**205 General power to Collector**

In all cases not herein otherwise provided for, the Collector may exercise any power exercisable by the Customs.

**Division 2 – Protection to Officers**

**206 Reasonable cause for seizure a bar to action**

No person shall be liable for any seizure under this Ordinance for which there has been reasonable cause, and when any claimant recovers any ship or goods seized or any proceeds thereof, and at the same time reasonable cause for the seizure is found, the finding shall bar all proceedings against all persons concerned in the seizing.

**207 Notice of action to be given**

No proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month after notice in writing has been delivered to him or left at his usual place of abode by the plaintiff, his attorney or agent, in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the proceeding is intended to be instituted, the name and place of abode of the plaintiff, and the name and place of business of the attorney or agent, unless the Chief Judicial Officer of the Territory or a Justice of the Supreme Court of the Territory has granted leave to the plaintiff to proceed without notice, which leave the Justice may grant on such terms as he thinks fit.

**208 Defect in notice not to invalidate**

No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence, and the Court may give leave to amend the notice as it thinks just.

**209 No evidence to be produced but that contained in notice**

Upon any proceeding instituted in pursuance of notice under section two hundred and seven the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in the notice, nor shall the plaintiff be

entitled to a verdict without proving on the trial that the notice has been duly served.

**210 Officer may tender amends**

It shall be lawful for any officer to whom notice of proceeding has been given, at any time within one month after the notice, to tender amends to the plaintiff, his attorney or agent, and in case the amends be not accepted, to plead the tender in defence, either alone or with other defences, and if the amends tendered be found to be sufficient no costs shall be recovered against the officer and he shall be entitled to costs, if he has brought the amount into Court when entering his defence.

**211 Commencement of proceedings against officers**

Every proceeding against any officer shall be commenced within six months after its cause has arisen and not afterwards, and the defendant may plead the general issue and give any special matter in evidence.

**212 Security may be required**

The Supreme Court of the Territory, on the application of any person who desires to commence any proceeding mentioned in the last preceding section against an officer, may require the officer to give security to the satisfaction of the Court to abide the result of the proceeding and in default of the giving of the security may sanction the immediate commencement of the proceeding.

## **PART XIII – PENAL PROVISIONS**

### **Division 1 – Forfeitures**

**213 Forfeited ships**

- (1) The following ships or boats, not exceeding two hundred and fifty tons registered tonnage, shall be forfeited to His Majesty:
  - (a) any ship or boat used in smuggling or knowingly used in the unlawful importation, exportation or conveyance of any prohibited imports or prohibited exports;

- (b) any ship or boat, found within one league of the coast, failing to bring to for boarding upon being lawfully required to do so;
  - (c) any ship or boat hovering within one league of the coast and not departing within twelve hours after being required to depart by an officer;
  - (d) any ship or boat from which any goods are thrown overboard, staved or destroyed to prevent seizure by the Customs;
  - (e) any ship or boat found within any port with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master of which is unable to lawfully account for the difference;
  - (f) any ship or boat, within one league of the coast, having false bulkheads, false bows, sides or bottoms or any secret or disguised place adapted for the purpose of concealing goods or having any hole, pipe or other device adapted for the purpose of running goods.
- (2) The owner of a ship exceeding two hundred and fifty tons registered tonnage, which would be forfeited if the ship were less than two hundred and fifty tons registered tonnage, shall be liable to a penalty of not exceeding \$20,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

**214 Forfeited goods**

The following goods shall be forfeited to His Majesty:

- (a) all goods which are smuggled or unlawfully imported, exported or conveyed;
- (b) all goods imported which are prohibited imports, excepting only goods, the importation of which is prohibited by proclamation and which shall have been shipped to be imported without knowledge of the proclamation by the shipper and before the expiration of a reasonable time for the acquisition of knowledge thereof at the port of shipment;
- (c) all goods imported in any ship or boat in which goods are prohibited to be imported;

- (d) all dutiable goods found on any ship or boat being unlawfully in any place;
- (e) all goods found on any ship after arrival in any port and not being specified or referred to in the Inward Manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for;
- (f) all goods in respect of which bulk is unlawfully broken;
- (g) all goods which being subject to the control of the Customs are moved, altered or interfered with, except by authority, and in accordance with this Ordinance;
- (h) all goods which, by this Ordinance, are required to be moved or dealt with in any way and which are not moved or dealt with accordingly;
- (i) all goods in respect of which any entry, invoice, declaration, answer, statement or representation which is false or wilfully misleading in any particular, has been delivered, made or produced;
- (j) any carriage or animal used in smuggling or in the unlawful importation, exportation or conveyance of any goods;
- (k) the cargo of any ship or boat which ship or boat hovers about the coast and does not depart within twelve hours after being required by an officer to depart;
- (l) all spirits, tobacco, snuff, cigars or cigarettes in packages of less than the prescribed size or weight, not being ships' stores, found on or attached to any ship or boat;
- (m) all goods, not being passengers' luggage, found on any ship after clearance, and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector;
- (n) all prohibited exports put on any ship or boat for export or brought to any wharf or place for the purpose of export;
- (o) all dutiable goods concealed in any manner;
- (p) any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer;

- (q) all dutiable goods found in the possession or in the baggage of any person who has got out of or landed from any ship or boat, and who has denied that he has any dutiable goods in his possession or who, when questioned by an officer, has not fully disclosed that the goods are in his possession or baggage;
- (r) all goods offered for sale on the pretence that the same are prohibited or smuggled goods;
- (s) all spirits which, having been methylated, are afterwards treated, filtered, refined, distilled or otherwise dealt with in any manner so that any substance may be extracted;
- (t) goods on which duty is due and unpaid, if a procedure for forfeiture of the goods has been prescribed by regulation.

**215 Forfeited packages and goods**

The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under the last preceding section shall extend to all goods packed or contained in the package.

**Division 2 – Penalties**

**216 Assembly for smuggling**

All persons to the number of two or more, assembled for the purpose of smuggling or for preventing the seizure of, or for rescuing after seizure, any smuggled goods shall be guilty of an indictable offence and shall be liable to imprisonment, with or without hard labour, for any term not exceeding five years.

**217 Collusive seizure, bribery, obstruction and like offences<sup>5</sup>**

Whoever:

*Collusive seizure*

- (a) being an officer of the Customs or Police, makes any collusive seizure or delivers up, or makes any agreement

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<sup>5</sup> The heading to section 217 and the headings to paragraphs (a) and (b) have been editorially altered under the *Legislation Publication Regulations 2011*.

to deliver up, or not to seize, any ship, boat, carriage or goods liable to forfeiture, or 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 purpose of seizing any ship, boat, carriage or goods and obtaining any reward for such seizure;

*Bribe offered to officer*

- (b) gives or procures to be given, or offers or promises to give or procure to be given, any bribe, recompense or reward to or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who, by threats, demands or promises, attempts to influence any officer in the discharge of his duty;

*Rescuing goods*

- (c) rescues any goods which have been seized or before, or at or after any seizure, staves, breaks or destroys any goods or documents relating thereto to prevent the seizure thereof, or the securing of the goods or the proof of any offence;

*Persons assaulting or obstructing officers*

- (d) assaults or by force resists, molests or obstructs or endeavours to intimidate any officer or any person acting in his aid or assistance in the execution of his duties,

shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding five years.

**218 Smuggling and unlawful importation and exportation**

- (1) No person shall:
  - (a) smuggle any goods;
  - (b) import any prohibited imports;
  - (c) export any prohibited exports; or
  - (d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.

Penalty: \$2,000.

- (2) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.
- (3) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.
- (4) Merchandise on board a ship calling at any port in the Territory but intended for, and consigned to, some port or place outside the Territory shall not be deemed to be unlawfully imported into the Territory if the goods are specified on the ship's manifest and are not transhipped or landed in the Territory or are transhipped or landed by authority.

**219 Master not to use or allow use of ship for smuggling, &c.**

The master of a ship or boat shall not use his ship or boat or knowingly suffer her to be used in smuggling or in the importation of any goods in contravention of this Ordinance or in the exportation or conveyance of any goods in contravention of this Ordinance.

Penalty: \$2,000.

**220 Special provision in relation to prohibited imports**

- (1) Any person who:
  - (a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession on board any ship any prohibited imports to which this section applies; or
  - (b) imports or attempts to import into the Territory any prohibited imports to which this section applies; or
  - (c) without reasonable excuse (proof whereof shall lie upon him) has in his possession any prohibited imports, to which this section applies, which have been imported into the Territory in contravention of this Ordinance; or
  - (d) aids, abets, counsels or procures or is in any way knowingly concerned in the importation into the Territory 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



intending importation, into the Territory of any prohibited imports to which this section applies,

shall be guilty of an offence against this Ordinance.

Penalty: Imprisonment for not less than three months and not more than two years.

- (2) This section shall apply to all prohibited imports to which the Administrator by proclamation declares that it shall apply.
- (3) An offence against this section shall be punishable on summary conviction.
- (4) This section shall not prevent any person from being proceeded against for an offence against any other section of this Ordinance but he shall not be liable to be punished twice in respect of any one offence.

**221 Customs offences**

No person shall:

- (a) evade payment of any duty which is payable;
- (b) obtain any drawback which is not payable;
- (c) prepare, pass or present any document purporting to be a genuine invoice which is not in fact a genuine invoice;
- (d) make any entry which is false in any particular;
- (e) make in any declaration or document produced to any officer any statement which is untrue in any particular or produce or deliver to any officer any declaration or document containing any such statement;
- (f) mislead any officer in any particular likely to affect the discharge of his duty;
- (g) refuse or fail to answer questions or to produce documents;
- (h) sell or offer for sale any goods upon the pretence that the goods, are prohibited imports or smuggled goods.

Penalty: \$2,000.

**222 False oath or affirmation**

Whoever wilfully makes any false statement on oath under this Ordinance shall be guilty of an indictable offence and shall be liable to imprisonment with hard labour for any period not exceeding four years.

**223 Aiders and abettors**

Whoever aids, abets, counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Ordinance shall be deemed to have committed such offence and shall be punishable accordingly.

**224 Attempts**

Any attempt to commit an offence against this Ordinance shall be an offence against this Ordinance punishable as if the offence had been committed.

**225 Offences not specifically provided for**

Any person who is guilty by act or omission of any contravention or evasion of this Ordinance for which no other penalty is provided shall be liable to a penalty of not more than \$200.

**226 Penalties in addition to forfeitures**

All penalties shall be in addition to any forfeiture.

**227 Maximum penalty in certain cases**

If any penalty hereby provided shall be less than three times the value of any goods in respect of which the offence has been committed the maximum penalty shall be thrice the value of the goods.

**228 Maximum penalty in cases of intent to defraud**

Any person may at the same time be charged with an offence against this Ordinance and with an intent to defraud the revenue and if, in addition to the offence, he is convicted of the intent the maximum penalty shall be double that otherwise provided.

**229 If previous conviction defendant may be imprisoned**

When any person is convicted of any offence against this Ordinance for which a pecuniary penalty is provided and it appears that the person has been previously convicted of a similar offence, the Court may, in lieu of or in addition to imposing any penalty order that the person be imprisoned with hard labour for a period not less than six months nor more than two years and with or without the right of release on payment of a penalty.

**230 Minimum penalty**

The minimum pecuniary penalty for any offence against this Ordinance shall be one-twentieth of the maximum which is prescribed in pounds.

**PART XIV – CUSTOMS PROSECUTIONS**

**231 Interpretation**

Proceedings by the Customs for the recovery of penalties under this Ordinance or for the condemnation of ships or goods seized as forfeited are herein referred to as Customs prosecutions.

**232 How instituted**

- (1) Customs prosecutions may be instituted in the name of the Chief Collector by action, information or other appropriate proceeding in the Supreme Court of the Territory, and when the prosecution is for a pecuniary penalty not exceeding One hundred pounds or the excess is abandoned the Customs prosecutions may be instituted in the name of the Collector in a Court of summary jurisdiction.
- (2) All summary convictions shall be subject to appeal in the manner provided.

**233 Evidence of authority to institute proceedings**

- (1) Where any Customs prosecution has been instituted by an officer in the name of the Chief Collector the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Chief Collector.

- (2) The production of a telegram purporting to be signed by the Chief Collector and purporting to authorize an officer to institute any Customs prosecution or proceedings, shall be 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 Chief Collector.

**234 Prosecution in accordance with practice rules**

Every Customs prosecution in the Supreme Court of the Territory may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

**235 Commencement of prosecutions**

Customs prosecutions may be instituted at any time within five years after the cause thereof.

**236 Information, &c., to be valid if in words of Ordinance**

All informations, summonses, convictions, condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Ordinance.

**237 Property in goods subject to control of 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 mentioning his name.

**238 No objection for informality**

No objection shall be taken or allowed to any information or summons for any alleged defect therein in substance or in form, or for any variance between the information or summons, and the evidence adduced at the hearing in support thereof, and the Court shall, at all times, make any amendment necessary to determine the real question in dispute or which appears desirable, and if any such defect or variance appears to the Court to be such that the defendant has been thereby deceived

or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

**239 Conviction not to be quashed**

No conviction, warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Customs Ordinance, shall be held void, quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of that defect.

**240 Protection to witnesses**

No witness on behalf of the Chief Collector or Collector in any Customs prosecution shall be compelled to disclose the fact that he received any information, or the nature thereof or the name of the person who gave the information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

**241 Defendant & competent witness**

- (1) In every Customs prosecution the defendant shall be competent to give evidence.
- (2) In every Customs prosecution, except for an indictable offence or for an offence directly punishable by imprisonment, the defendant shall be compellable to give evidence.

**242 Averment of prosecution sufficient**

In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information declaration or claim shall be deemed to be proved in the absence of proof to the contrary but so that:

- (a) when an intent to defraud the revenue is charged the averment shall not be deemed sufficient to prove the intent; and
- (b) in all proceedings for an indictable offence or for an offence directly punishable by imprisonment the guilt of the defendant must be established by evidence.

**243 Proof of proclamation, &c.**

The production of the New Guinea Gazette containing any proclamation, Gazette notice or regulation appearing to have been issued or made under this Ordinance, or the production of any document certified by the Chief Collector or the Collector to be a true copy of or extract from any such proclamation, Gazette notice or regulation, issued or made under this Ordinance, shall be *prima facie* evidence of the issue or making of such proclamation, Gazette notice or regulation and that it is in force.

**244 Minimum penalties**

No minimum penalty imposed by this Ordinance shall be liable to reduction under any power of mitigation which would, but for this section, be possessed by the Court.

**245 Treatment of convicted offenders**

Where any pecuniary penalty is adjudged to be paid by any convicted person the Court:

- (a) may commit the offender to gaol until the penalty is paid; or
- (b) may release the offender upon his giving a security for the payment of the penalty; or
- (c) may exercise, for the enforcement and recovery of the penalty, any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

**246 Collector may levy on goods in his possession**

When any pecuniary penalty adjudged against any person is unpaid, the Collector may levy the penalty by sale of any goods belonging to that person which are then or thereafter subject to the control of the Customs.

**247 Release of Offenders**

The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge the person:

- (a) on payment to him of the penalty adjudged;

- (b) on a certificate by the Collector that the penalty has been paid or realized;
- (c) if the penalty adjudged to be paid is not paid or realized, according to the following table:

Amount of Penalty	Period after commencement of imprisonment at the expiration of which defendant is to be discharged
£2 or under	Seven days
Over £2 and not more than £5	Fourteen days
Over £5 and not more than £20	One month
Over £20 and not more than £50	Two months
Over £50 and not more than £100	Three months
Over £100 and not more than £200	Six months
Over £200	One year.

**248 Imprisonment not to release penalty**

No person shall be twice imprisoned upon the same conviction, but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Ordinance other than by imprisonment of the person convicted.

**249 Conviction to operate as a condemnation**

Where the committal of any offence causes a forfeiture of goods, the conviction of any person for the offence shall have effect as a condemnation of the goods in respect of which the offence is committed.

**250 Parties may recover costs**

In all Customs prosecutions the Court may award costs against any party or claimant and all provisions of this Ordinance relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid.

**251 Application of penalties**

All penalties and forfeitures recovered under this Ordinance shall be applied to such purpose and in such proportions as the Chief Collector directs.

**PART XV – SETTLEMENT OF CASES BY THE CHIEF COLLECTOR**

**252 Settlement of disputes by Chief Collector**

If any dispute arises between any officer and any person with reference to any contravention of this Ordinance the Chief Collector may, in manner prescribed, with the written consent of that person, inquire into and determine the dispute, and shall have power by order, a notification of which shall be published in the New Guinea Gazette, to impose, enforce, mitigate or remit any penalty or forfeiture which he determines has been incurred.

**253 Chief Collector's order to be final**

Every order made under the last preceding section shall be final and without appeal and shall not be liable to be quashed on any account and the copy thereof shall be delivered to such person and may be enforced in the same manner as the order of a Court of summary jurisdiction.

**254 Powers of Chief Collector at inquiries**

The Chief Collector in holding any inquiry under this Part of this Ordinance shall hold the inquiry in public and may:

- (a) summon the parties and any witness before him;
- (b) take evidence on oath;
- (c) require the production of documents; and



- (d) allow reasonable expenses to witnesses and costs to successful parties.

**255 Obligations on witnesses**

No person, being summoned as a witness at any inquiry under this Ordinance, shall:

- (a) disobey the summons;
- (b) refuse to be sworn as such witness;
- (c) refuse or fail to produce any document he is required to produce;
- (d) being sworn as a witness, refuse or fail to answer any question lawfully put to him.

Penalty: \$400.

**256 Chief Collector may determine difference**

Any matter of difference arising under this Ordinance, or in relation to the Customs and not involving a contravention of this Ordinance, may, at the request of the parties interested, be referred to the Chief Collector for decision, and thereupon the Chief Collector may, in such manner as he thinks fit, inform his mind of the circumstances and finally decide the difference.

## **PART XVI – REGULATIONS**

**257 Regulations to have force of law**

- (1) The Administrator may make regulations not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed, for giving effect to this Ordinance 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;

- (b) the maximum or minimum weight or quantity of imported goods or goods for export which may be contained in one package;
  - (c) the conditions of preparation or manufacture for export of any articles used for food or drink by man, or used in the manufacture of food or drink by man; and
  - (d) the conditions as to purity, soundness and freedom from disease to be conformed to by goods for export;
  - (e) such alterations and variations to the persons, places and names as may be considered necessary or desirable for the avoidance of uncertainty having due regard to the fact that the Ordinance is an adopted Ordinance.
- (2) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

**258 Publication of regulations**

All regulations made under this Ordinance shall:

- (a) be published in the New Guinea Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations.

**PART XVII – MISCELLANEOUS**

**259 Commissioned ships to be reported**

The person in command of any ship holding commission from His Majesty or from any foreign State, having on board any goods other than ships' stores laden in parts beyond the seas, shall, when called upon by the Chief Collector or by the Collector or an officer specially authorized by the Chief Collector or the Collector so to do:

- (a) deliver an account in writing of the quantity of the goods, the marks and numbers thereof, and the names of the shippers and consignees and declare to the truth thereof;
- (b) answer questions relating to the goods.

**260 Commissioned ships may be searched**

Ships under commission from His Majesty or any foreign State, having on board any goods other than ships' stores laden in parts beyond the seas, may be boarded and searched by an officer especially authorized as mentioned in the last section, in the same manner as other ships, and the officer may bring any such goods ashore and place them in a King's warehouse.

**261 Collectors' sales**

As to sales by the Collector:

- (a) the goods shall be sold by auction or by tender and after such public notice as is prescribed, and, where not prescribed, after reasonable public notice;
- (b) the goods may be sold either free or subject to duty and charges, and the price shall be paid in cash on the acceptance of the bidding or tender;
- (c) no bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

**262 Proceeds of sales**

The proceeds of any goods sold by the Collector shall be applied as follows:

Firstly, in the payment of the expenses of the sale;

Secondly, in payment of the duty;

Thirdly, in payment of the warehouse rent and charges;

Fourthly, in payment of the freight, if any due upon the goods if written notice of the freight has been given to the Collector;

And the balance, if any, shall be paid to the Chief Collector on account of the person entitled thereto.

## SCHEDULES

### SCHEDULE I

Section 41

The Territory of New Guinea

#### SECURITY TO THE CUSTOMS

By this Security the subscribers are pursuant to the Customs Ordinance of 1921 bound to the Customs of the Territory of New Guinea in the sum of *(here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition)* subject only to this condition that if *(here insert the condition of the security)* then the security shall be thereby discharged.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Names and Descriptions of Subscribers.	Signature of Subscribers.	Signature of Witnesses.

NOTE. — If liability is not intended to be joint and several, and for the full amount, here state what is intended, as for example thus: 'The liability of the subscribers is joint only' or 'The liability of *(mentioning subscribers)* is limited to *(here state amount of limit of liability or mode of ascertaining limit)*.'

## SCHEDULE II

Section 73

The Territory of New Guinea

### SCALE OF FEES FOR WAREHOUSES TO BE PAID BY LICENSEES

When the whole services of a locker are required	£200 p.a.
When the whole services of more than one locker are required for each additional locker after the first	£150 „
When only half the services of a locker are required	£100 „
When the whole services of a locker are not required a charge of two shillings per hour for each hour or part of an hour necessary for the locker to be in attendance and a sum to be fixed by the Chief Collector not exceeding	£50 „

All questions as to the number of lockers required and the time necessary for the attendance shall be determined by the Chief Collector.

The above scale shall apply to the following places only:

Rabaul,  
Kaewieng,  
Madang,  
Kieta.

At any other places such fees not exceeding the above scale shall be charged as may be prescribed.

### SCHEDULE III

Section 184

The Territory of New Guinea

#### WRIT OF ASSISTANCE

HIS MAJESTY THE KING

TO ALL PEACE OFFICERS AND TO ALL WHOM IT MAY CONCERN:

*Greeting.*

We command you to permit A.B. of \_\_\_\_\_ an Officer of the Customs of the Territory of New Guinea and his assistants and each and every of them at any time in the day or night to enter into and search any house premises or place and to break open and search the same and any chests, trunks or packages in which goods may be or are supposed to be and to seize any goods forfeited to Us and any goods that he, the said A.B., has reasonable cause to believe are forfeited to Us and to take such goods to the nearest King's warehouse or to such other place of security as Our Collector of Customs in our said Territory shall direct.

And We grant to the said A.B. all powers which are capable of being granted by a Writ of Assistance.

And We command all Peace Officers and all Our loving subjects in Our said Territory of New Guinea upon sight of Our Writ and upon being so required by the said A.B. to be aiding and assisting the said A.B. in the matters aforesaid: Herein fail not at your peril.

And We declare that this Our Writ of Assistance shall remain in force so long as the said A.B. remains an Officer of Customs in Our Territory of New Guinea whether in his present capacity or not.

Witness (*name and description of the Judge testing the Writ*) at

the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred

and

(Seal)

By the Court

**SCHEDULE IV**

Section 185

The Territory of New Guinea

**CUSTOMS WARRANT**

To

You are hereby authorized to enter into at any time in the day or night if necessary and search any house premises or place; and to break open the same and any chests trunks or packages in which goods may be or are supposed to be and to seize and take away any forfeited goods or goods which you have reasonable grounds to believe are forfeited you may find therein and forthwith to put and secure the same in the King's warehouse or such other place of security as the Collector may direct. And for so doing this shall be your sufficient Warrant.

This Warrant shall remain in force for one month from the date thereof.

Dated this                      day of                                      in            the  
year One

thousand nine hundred and                                      .

(Seal)

(Signature).

# Notes to the Customs Act 1921

## Tables of Constituent Legislation

### Ordinance (New Guinea)

Citation	Number	Made	Gazettal	Commencement
<i>Customs Ordinance 1921</i>	1921/20	28.10.1921	28.10.1921	01.12.1921*

\* For New Guinea. The effective date for Nauru was 23.09.1922 (date of commencement of the *Customs Regulations Ordinance 1922*, now cited as the *Law Adoption (Customs) Act 1922*).

### Ordinances and Order (Nauru)

Citation	Number	Made	Gazettal	Commencement
<i>Customs Regulations Ordinance 1922</i>	1922/14	23.09.1922	—	23.09.1922
<i>Customs Regulations Ordinance 1936</i>	1936/01	15.02.1936	—	15.02.1936
<i>Adaptation of Laws Order 1969</i>	GN 188/1969	09.10.1969	13.10.1969	31.01.1968

\* Gazettal date is of no legal significance for Ordinances made before 30.08.1956 (commencement of the *Interpretation Ordinance 1956*).

### Acts

Short title	Number	Certification	Commencement
<i>Customs Tariff Act 1997</i>	1997/12	13.06.1997	01.07.1997
<i>Customs (Amendment) Act 2009 (as amended by the Customs (Rates of Duty) Act 2010)</i>	2009/16 (2010/02)	22.12.2009 (01.11.2010)	22.12.2009 (01/11.2010*)
<i>Customs (Rates of Duty) Act 2010</i>	2010/02	01.11.2010	01.11.2010

\* The amendments of the *Customs (Amendment) Act 2009* made by the *Customs (Rates of Duty) Act 2010* are expressed to have had effect from the commencement of the *Customs (Amendment) Act 2009*.

### Table of Amendments\*

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Section 1	Citation rs. by Act 2009/16, Act 2010/02.
Section 4	Am. by Act 2009/16 (as am. by Act 2010/02), Act 2010/02.
Section 5	Rs. by Act 2009/16 (as am. by Act 2010/02).
Section 10	Rs. by Act 1997/12.
Section 16	Am. by Act 1997/12.



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Provision affected	How affected
Section 19	Am. by Act 1997/12.
Section 22	Am. by Act 1997/12.
Section 27	Am. by Act 1997/12.
Section 34	Am. by Act 1997/12.
Section 44	Am. by Act 1997/12.
Section 45	Am. by Act 1997/12.
Section 46	Am. by Act 1997/12.
Section 47	Rep. by Act 1997/12.
Section 48	Rep. by Act 1997/12.
Section 50	Rep. by Act 1997/12.
Section 51	Am. by Act 1997/12.
Section 52	Am. by Act 1997/12.
Section 53	Am. by Act 1997/12.
Section 54	Am. by Act 1997/12.
Section 55	Am. by Act 1997/12.
Section 56	Am. by Act 1997/12.
Section 57	Am. by Act 1997/12.
Section 58	Am. by Act 1997/12.
Section 59	Am. by Act 1997/12.
Section 66	Am. by Act 1997/12.
Section 67	Am. by Act 1997/12.
Section 81	Am. by Act 1997/12.
Section 82	Am. by Act 1997/12.
Section 83	Am. by Act 1997/12.
Section 92	Am. by Act 1997/12.
Section 100	Am. by Act 1997/12.
Section 102	Am. by Act 1997/12.
Section 104	Am. by Act 1997/12.
Section 105	Am. by Act 1997/12.
Section 107	Am. by Act 1997/12.
Section 109	Am. by Act 1997/12.
Section 112	Am. by Act 1997/12.

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*Customs Act 1921*

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Provision affected	How affected
Section 113	Am. by Act 1997/12.
Section 114	Am. by Act 1997/12.
Section 117	Am. by Act 1997/12.
Section 119	Rs. by Act 2009/16 (as am. by Act 2010/02).
Section 120	Rs. by Act 2009/16 (as am. by Act 2010/02).
Section 141	Am. by Ord. 1922/14, Ord. 1936/01.
Section 146	Am. by Act 1997/12.
Section 162	Am. by Act 1997/12.
Section 171	Subs. (2) am. by Act 1997/12.
Section 174	Am. by Act 1997/12.
Section 177	Am. by Act 1997/12.
Section 178	Am. by Act 1997/12.
Section 183	Am. by Act 1997/12.
Section 184	Am. by GN 188/1969.
Section 188	Am. by Act 1997/12.
Section 196	Subs. (2) am. by Act 1997/12.
Section 200	Am. by Act 1997/12.
Section 207	Am. by GN 188/1969.
Section 212	Am. by GN 188/1969.
Section 213	Subs. (2) am. by Act 1997/12.
Section 214	Am. by Act 2009/16 (as am. by Act 2010/02).
Section 218	Subs. (1) am. by Act 1997/12.
Section 219	Am. by Act 1997/12.
Section 221	Am. by Act 1997/12.
Section 225	Am. by Act 1997/12.
Section 232	Subs. (1) am. by GN 188/1969.
Section 234	Am. by GN 188/1969.
Section 255	Am. by Act 1997/12.
Section 257	Am. by Act 1997/12.

\* In addition to the amendments noted above, s. 2 of the *Customs Regulations Ordinance 1922* (now cited as the *Law Adoption (Customs) Act 1922*) provided for the substitution for 'Chief Collector' and 'Minister' (wherever occurring) of 'Administrator'. Not all of the 67 instances of the occurrence of 'Chief Collector' in the original Ordinance lend themselves to being dealt with in that manner and,

## Customs Act 1921

accordingly, all such references remain in their original form in this compilation. There were no instances of the occurrence of 'Minister'.

Further, s. 6 of the *Customs Tariff Act 1997* provided for amendment so that 'all penalties' (not restricted to pecuniary penalties) are increased ten times. On the basis of a purposive interpretation (supported by the Explanatory Memorandum that accompanied the Bill for that Act), those amendments, so far as they relate to provisions imposing pecuniary penalties, are incorporated in this compilation and noted in the Table of Amendments. However, other provisions making reference to non-pecuniary penalties and other money amounts are unchanged.

### Note on application and operation of the Customs Act 1921

- Note 1: Section 2 of the *Law Adoption (Customs) Act 1922* provides in part: that the *Customs Ordinance 1921* of the Territory of New Guinea is adopted as a law of Nauru 'so far as it can reasonably be made applicable to the circumstances of the Island, and is not repugnant to or inconsistent with the provisions of any Act, Ordinance, law, regulation, rule, order, or proclamation having the force of law that has been or may hereafter be expressed to extend to or applied to or made or promulgated in the Island.'
- Note 2: In spite of the fact that some amendments to the *Customs Act 1921* have not been capable of incorporation in this compilation (as explained in the footnote to section 4, on page 3), section 10(1) of the *Interpretation Act 1971* has the effect of modifying the way in which the Act is read, so that it is applicable to the circumstances of Nauru. Section 10(1) of the *Interpretation Act 1971* provides in part: Any applied statute shall, subject to the Act or Ordinance giving it force or application in or to Nauru, be read with such formal alterations as to names, localities, or Courts, officers, persons, moneys, penalties or otherwise as may be necessary to make the same applicable to the circumstances.'
- Note 3: Sections 2A, 3 and 4 of the *Law Adoption (Customs) Act 1922* (inserted by 1997/12) also affect the operation of this Ordinance.
- Note 4: Section 141(a) of this Act is superseded by section 4(1) of the *Law Adoption (Customs) Act 1922*; see also section 8 of the *Customs (Rates of Duty) Act 2010*.