



REPUBLIC OF NAURU

Customs Act 2014

Act No. 16 of 2014

An Act to regulate Customs controls, management and enforcement, revenue administration, border controls and border management, trade and travel facilitation, security, and for related purposes.

Certified 10th September 2014

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REPUBLIC OF NAURU

Customs Act 2014

Act No. 16 of 2014

An Act to regulate Customs controls, management and enforcement, revenue administration, border controls and border management, trade and travel facilitation, security, and for related purposes.

Certified on 10th September 2014

Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the *Customs Act 2014*.
- (2) This Act commences on 1 October 2014.
- (3) Despite subsection (2), the following provisions will commence on a date or dates notified by the Minister in the Gazette sections, 258, 218, 219 and Part 12.

2. Definitions

- (1) In this Act, unless the context otherwise requires:
 - 'aircraft' means a machine that can derive support in the atmosphere from the reaction of the air;
 - 'arrival':
 - (a) for a craft, includes the arrival of the craft, whether lawfully or unlawfully, in the Republic from a point outside the Republic whether or not the craft lands at, hovers above, berths, moors, anchors, or stops at, or otherwise arrives at any place within the Republic; and
 - (b) for a person, means the entry of the person by any means, whether lawfully or unlawfully, into the Republic from a point outside the Republic;
 - 'authorised person' means a person authorised under section 5;
 - 'CCA licence' means a Customs controlled area licence issued under section 13, and 'CCA licensee' has a corresponding meaning;
 - 'Chief Collector of Customs', means the Secretary responsible for Customs;
 - 'craft' includes any aircraft, ship, boat or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;
 - 'Customs' means the Republic of Nauru Customs Office as established under section 4(1);

‘Customs airport’ means an aerodrome designated as a Customs airport under section 10;

‘Customs-approved secure exports scheme’ means, in relation to goods that are to be exported (whether under drawback or not), a scheme approved by the Chief Collector under section 84:

- (a) for the packing of the goods, in a Customs approved secure package, by approved persons, in approved conditions, and subject to approved requirements (including, without limitation, a requirement that a seal or markings in an approved form be applied to the package, as soon as it is secured—
 - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (ii) to help to identify interference or tampering with the package after it is secured); and
- (b) for the immediate conveyance (on the completion of the packing of the goods in that way) of Customs approved secure package, by approved persons and in an approved manner, to the place of shipment for shipping, or if it is not in that way immediately conveyed and shipped, to some approved place or places of security enroute to the place of shipment; and
- (c) for the goods from the time when they are first secured in a Customs approved secure package until the exportation of the goods to a point outside the Republic, to be goods, subject to the control of Customs; and
- (d) for the powers of detention and search in section 159 to be available in respect of a vehicle in the Republic if there are suspected to be in or on the vehicle goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package; and
- (e) for a Customs officer to be empowered, under section 162(2), to question 1 or more of the following persons about any cargo destined to be exported from the Republic—
 - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of Customs and in a Customs approved secure package:
 - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of Customs and in a Customs-approved secure package:
 - (iii) a person employed by a person described in subparagraph (i) or (ii); and
- (f) for the powers in section 175 (which include powers of examination) to be available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package;

‘Customs-approved secure package’ means any kind of package approved by the Chief Collector under section 84 for the purposes of a Customs-approved secure exports scheme;

‘Customs controlled area’, ‘licensed area’ or ‘CCA licensed area’ means an area licensed as such under this Act, for one or more of the purposes under section 11;

‘Customs direction’:

(a) means a lawful request, order, command, or instruction (whether in writing or verbal) given by a Customs officer (or an authorised person) to any person to do or to refrain from doing an act or to submit to a procedure for the purposes of this Act; and

(b) includes—

(i) any notice, poster or sign publicly displayed in a Customs place or Customs controlled area; and

(ii) a direction contained in a form prescribed under this Act;

‘Customs officer’ or ‘officer’:

(a) means, for the purpose of this Act and any other enactment, a person—

(i) appointed as such by the Chief Collector; or

(ii) employed by the Chief Collector and declared, whether at the time of or after the appointment, by the Chief Collector, to be a Customs officer; and

(b) includes (except for sections 5(4), 7, 58, and 209), an authorised person who—

(i) is carrying out his or her functions and powers under an authorisation; and

(ii) is required by section 5(4) to be treated for the purposes of that section, as a Customs officer;

‘Customs place’ means a Customs port or Customs airport designated under section 10;

‘Customs port’ means a port of entry designated as a Customs port under section 10;

‘Customs seal’, for a package of goods to be exported, means a seal approved by the Chief Collector for use on the package, as soon as the seal is secured (and pursuant to a notice under section 82), to fulfil either or both of the following purposes:

(a) to show that, when the seal was secured, the package contained only the goods, and was secured in an approved way; and

(b) to help to identify interference or tampering with the package after the seal is secured;

‘Customs value’ or ‘value’, for goods, means Customs value of goods as determined under the Schedule 2;

‘dangerous item’ means:

(a) any firearm as defined in section 6 of the Civil Aviation Act 2011; and

(b) any dangerous or offensive weapon or instrument of any kind whatsoever;
or

(c) any ammunition; or

(d) any explosive substance or device or any other injurious substance or device of any kind whatever that could be used to endanger a person’s safety

‘declaration’ means the provision of all information to Customs whether verbal or written in a document or in electronic form, by a person relating to:

- (a) the import or export of goods; or
- (b) the arrival or departure of a craft; or
- (c) arrival or departure of a person;

‘Department’ means the Department which Customs falls under;

‘document’:

- (a) means a document in any form, whether or not signed or initialled or otherwise authenticated by the maker; and
- (b) includes—
 - (i) any form of writing on material;
 - (ii) information recorded, transmitted, or stored by means of a tape recorder, computer, or other device, and material subsequently derived from information so recorded, transmitted, or stored;
 - (iii) a label, marking, or other form of writing that identifies a thing of which it forms part or to which it is attached by any means;
 - (iv) a book, map, plan, graph or drawing;
 - (v) a photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

‘domestic cargo’ means goods that, having been brought within a Customs controlled area at one Customs place for carriage by air or sea to any other Customs place in the Republic on either:

- (a) a craft that—
 - (i) begins its journey outside the Republic; and
 - (ii) in the course of that journey, enters the Republic and travels between at least 2 Customs places in the Republic; or
- (b) a craft that—
 - (i) begins its journey at a Customs place in the Republic; and
 - (ii) in the course of that journey, travels to at least one other Customs place in the Republic before leaving the Republic,—

are within that Customs controlled area or are being carried on the craft from one Customs place to another Customs place or, having been so carried on the craft, are awaiting removal from a Customs controlled area at a Customs place;

‘domestic passenger’ means a passenger, not being an internationally ticketed passenger, who has an entitlement to air or sea travel for a domestic sector on either:

- (a) a craft that—
 - (i) begins its journey outside the Republic; and
 - (ii) in the course of that journey, enters the Republic and travels between at least 2 Customs places in the Republic; or
- (b) a craft that—
 - (i) begins its journey at a Customs place in the Republic; and
 - (ii) in the course of that journey, travels to at least one other Customs place in the Republic before leaving the Republic;

‘domestic sector’ means a journey from one Customs place to another within the Republic

‘dutiabale goods’ means any kind of goods subject to duty under this Act;

‘duty’:

- (a) means a duty, additional duty, tax, fee, charge, or levy imposed on goods pursuant to this Act; and
- (b) includes a duty imposed under the Customs Tariff Act 2014;

‘entry’ means a declaration lodged by an importer or exporter for the clearance of goods from Customs control;

‘entry processing system’ means a Customs electronic entry processing system provided under Part 12;

‘electronic publication’ means a thing (including but not limited to a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words;

‘exportation’:

- (a) except where otherwise expressly provided, means any shipment in any craft for transportation to a point outside the Republic; and
- (b) for an electronic publication referred to in section 92 or order made under section 92, includes the sending of the electronic publication from the Republic by any means (other than by broadcasting) to a point outside the Republic; and
- (c) ‘to export’ and ‘exported’ have corresponding meanings

‘exporter’:

- (a) means a person by or for whom goods are exported; and
- (b) includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods on or at any time after entry for export and before they are exported;

‘forfeited goods’ means goods that are forfeited to the Republic under section 283;

‘goods’ means all kinds of movable personal property, including animals;

‘goods subject to the control of Customs’ has the meaning in section 21;

‘importation’:

- (a) for goods, means the arrival of the goods in the Republic in any manner, whether lawfully or unlawfully, from a point outside the Republic; and
- (b) for electronic publications under section 91, includes the arrival of the electronic publication in the Republic by transmission by any means (other than by broadcasting) from a point outside the Republic;

‘importer’:

- (a) means a person by or for whom goods are imported; and
- (b) includes the consignee of goods and a person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or any time after their importation and before they have ceased to be subject to the control of Customs;

‘international cargo’ means any cargo that has arrived from a point outside the Republic or is destined to be exported from the Republic;

‘international crew’ means the crew or any member of the crew of a craft that is on a journey that—

- (a) began outside the Republic; or

- (b) began in the Republic and is to continue outside the Republic;
- ‘international passenger’ means a person who has entitlement to travel on a craft within the Republic where that travel is part of an international journey that—
- (a) began outside the Republic; or
 - (b) began in the Republic and is to continue outside the Republic;
- ‘internationally ticketed passenger’ means a person who has an entitlement to air or sea travel for a domestic sector, being a sector included in tickets for an international journey that—
- (a) began outside the Republic; or
 - (b) began in the Republic and is to continue outside the Republic;
- ‘invoice’ for any imported goods, means the original invoices, bills of lading, bill of parcels, policies of insurance, letters and other documents showing the value of the goods at the place at which they were purchased, together with the freight, insurance and other charges on the goods;
- ‘Judge’ means a Judge of the District Court;
- ‘manufacturing area’ means a place licensed under section 13 for the purpose described in section 11(a);
- ‘police officer’ means a sworn member of the Republic Police Service appointed under the Nauru Police Force Act 1972;
- ‘Minister’ means the Minister responsible for Customs;
- ‘objectionable’, for publications,:
- (a) means a publication that describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in a manner that the availability of the publication is likely to be injurious to the public good; and
 - (b) includes any publication that promotes or supports, or tends to promote or support—
 - (i) the exploitation of persons under 18 years, or both, for sexual purposes; or
 - (ii) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
 - (iii) sexual conduct with or upon the body of a dead person; or
 - (iv) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
 - (v) bestiality; or
 - (vi) acts of torture or the infliction of extreme violence or extreme cruelty
 - (vii) any other prescribed objectionable act or conduct;
- ‘occupier’, of land:
- (a) means the owner; and
 - (b) includes a lessee or tenant, a licensee, or a person who has the right to occupy land under other authority;
- ‘operator’ of a business:
- (a) means the person actively engaged, whether alone or with others, in the carrying on of the business, and whether registered as such; and
 - (b) for a body corporate, includes—
 - (i) a director, manager, secretary, or other similar officer engaged in the direct control or management of its business, and

- (ii) a person who purports to act in any of the capacities under subparagraph (i);
- ‘overseas company’ means any company other than one incorporated in the Republic;
- ‘overseas register’ means the register of companies that are incorporated outside the Republic, which is kept under the Corporations Act 1972;
- ‘owner’:
- (a) for a craft, includes the owner or charterer of the craft, and a person acting as agent for the owner or charterer; and
 - (b) for goods, includes the importer or a person having possession of or who is beneficially interested in the goods; and
 - (c) for land, means the person entitled to receive rent for the land, or who would be so entitled if the land were let to a tenant for any rent;
- ‘package’ includes any means used or capable of being used to pack, cover, enclose, contain or encase goods for carriage, a bulk cargo container, a pallet or a similar device;
- ‘prescribed’ means:
- (a) for matter under section 317, prescribed by the Chief Collector; and
 - (b) for any other matter, prescribed by regulations under this Act;
- ‘prohibited exports’ means goods or electronic publications the exportation of which is prohibited, whether conditionally or unconditionally, by or under section 92;
- ‘prohibited goods’ means prohibited exports or prohibited imports;
- ‘prohibited imports’ means goods or electronic publications the importation of which is prohibited, whether conditionally or unconditionally, by or under section 91;
- ‘publication’ means:
- (a) any film, book, sound recording, picture, newspaper, photograph, photographic negative, photographic plate, or photographic slide;
 - (b) any print or writing;
 - (c) a paper or other thing that has printed or impressed upon it, or otherwise shown upon it, 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words;
 - (d) a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words;
- ‘public notice’ means—
- (a) a notice or publication in the *Gazette* or any other official publication of the Government;
 - (b) a notice published in any form of media such as radio, television, or newspaper; and
 - (c) if a notice is published on an internet site to which the public have free access, includes that notice;
- ‘Public Service’ has the meaning in section 20 of the Public Service Act 2004;
- ‘rectifying’ of spirits, means purifying by a process of re-distillation;
- ‘registered user’ means an individual registered under Part 12 as a user of the Customs electronic entry processing system;

'security' means any security for payment of duty payable under this Act, including any additional costs incurred by Customs in administering the security;

'ship' means a vessel used in navigation, not being a vessel propelled only by oars; and includes a hovercraft or submarine;

'shipment' or 'to ship' includes loading or to load into a craft;

'spirits':

- (a) means ethyl alcohol, whether or not denatured; and
- (b) includes spirituous beverages, such as brandy, gin, rum, vodka, whisky, and any description of spirituous liquor derived from ethyl alcohol;

'Tariff' means Schedule 1 of the Customs Tariffs Act 2014;

'the Customs' means the Republic of Nauru Customs Office as established by section 4(1);

'tobacco' includes cigars, cigarettes, and snuff;

'uncustomed goods' means goods on which duty has become due and payable but is unpaid;

'unique user identifier' means a user identifier for use by a registered user in an entry processing system;

'unlawfully exported' means exported in breach of this Act or any other enactment;

'unlawfully imported' means imported in breach of this Act or any other enactment;

'vehicle' means a conveyance for use on land, whether or not it is also capable of being used on or over water;

'working day' means a day of the week, other than a Saturday, Sunday, or public holiday.

3. Act to Bind Government

(1) This Act binds the Government.

PART 2 - ADMINISTRATION

4. The Republic of Nauru Customs Office

(1) The Republic of Nauru Customs Office is established.

(2) The Secretary responsible for Customs;

(a) is the Chief Collector of Customs; and

(b) as such, is also a Customs officer.

(3) The Chief Collector may, in writing, designate officers or other employees of the Department as Customs officers for the purposes of this Act.

5. Authorised persons

(1) The Chief Collector may, in writing (including electronic form), authorise any suitably qualified and trained person, other than a Customs officer, who is an officer of Customs or another Department or government agency or any other person, to carry out any function or power of a Customs officer under this Act or other enactment.

(2) The authorisation must state:

(a) the authorised function or power; and

(b) the term of the authorisation of up to 3 years.

(3) The authorised person:

- (a) is treated for the purposes of this Act (other than section 2, this subsection, and sections 7, 58 and 209) as a Customs officer when carrying out the authorised function or power; and
 - (b) must surrender to the Chief Collector any article or document the authorised person received under the authorisation.
- (4) The Chief Collector may:
- (a) extend an authorisation for a further term of up to 3 years; or
 - (b) revoke an authorisation on any of the following grounds –
 - (i) incapacity, neglect of duty, or misconduct; or
 - (ii) the authorised person voluntarily requests, in writing, the Chief Collector to revoke the authorisation or
 - (iii) any other grounds where, in the opinion of the Chief Collector, the authorisation is no longer necessary.
- (5) In this section, 'suitably qualified and trained person' means an officer or employee of the Department who is not a designated Customs officer or an officer or employee of another Department or any other person.

6. Delegation by the Chief Collector

- (1) The Chief Collector may delegate to any person any of the Chief Collector's functions or powers under this Act or any other enactment.
- (2) The person who is delegated any functions or powers under subsection (1) may, with the prior approval of the Chief Collector, sub-delegate any of the delegated functions or powers to another person.
- (3) A delegate may carry out delegated functions or powers in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act and not by delegation.
- (4) A delegation:
- (a) may be subject to any general or special conditions imposed by the Chief Collector; and
 - (b) must be in writing; and
 - (c) must be given for a specified period but may be revoked; and
 - (d) does not affect or prevent the exercise of any function or power by the Chief Collector; and
 - (e) does not affect the responsibility of the Chief Collector for the actions of the delegate.
- (5) In this section:
- 'delegate' means a person who is delegated or sub-delegated any functions or powers under this section;
 - 'delegation' means a delegation or sub-delegation made under this section.

7. Identity cards

- (1) The Chief Collector must issue an identity card or other means of identification to each Customs officer and any authorised person other than a police officer.
- (2) When carrying out any power under this Act, a Customs officer or an authorised officer must, on request, produce the identity card or other means of identification for inspection.
- (3) A person who ceases to become a Customs officer or authorised person must, as soon as possible, return the identity card or other means of identification to the Chief Collector.

8. Customs flag

The Customs flag is the Republic flag, with the addition in the fly of the words 'Nauru Customs' in bold characters.

9. Seal of Customs

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

PART 3 - CUSTOMS PLACES AND CUSTOMS CONTROLLED AREAS

Division 1 – Customs places

10. Customs places

- (1) The Chief Collector may:
 - (a) by notice in the *Gazette*, designate a port as a Customs port or an airport as a Customs airport;
 - (b) impose conditions or restrictions on any declared Customs port and Customs airport.
- (2) Customs ports and Customs airports are collectively called Customs places.
- (3) Before carrying out any power under this section, the Chief Collector must consult the Secretary responsible for the:
 - (a) Department of Justice and Border Control;
 - (c) Department of Health; and
 - (d) any other prescribed person.
- (4) The power of the Chief Collector under this section, includes:
 - (a) the power to amend, suspend or revoke the declaration;
 - (b) the power to amend, suspend or revoke any conditions or restrictions; and
 - (c) the power to impose new conditions or restrictions.

Division 2 – Customs controlled areas

11. Customs controlled areas

Subject to any prescribed exemptions and to section 13(4), an area may not be used for any of the following purposes unless the area is licensed as a Customs controlled area:

- (a) the manufacture of goods specified for the purpose of this paragraph; or
- (b) the deposit, keeping, or securing of imported goods without payment of duty on the goods, pending the export of those goods; or
- (c) the temporary holding of imported goods for the purposes of examination of those goods under section 175 (including the holding of the goods while they are awaiting examination); or
- (d) the disembarkation, embarkation, or processing of persons arriving in or departing from the Republic; or
- (e) the processing of craft arriving in or departing from the Republic or the loading or unloading of goods onto or from such craft; or
- (f) any other prescribed purpose.

12. Application for licence

- (1) An application for an area to be licensed as a Customs controlled area:
 - (a) may be made by the owner or occupier of, or person operating in, the area; and
 - (b) must be made in the prescribed form; and
 - (c) must contain any other prescribed particulars.
- (2) The Chief Collector may request further information from an applicant if the Chief Collector considers that the information is relevant to the application.
- (3) An applicant may, at any time before the Chief Collector makes a decision on the application, advise the Chief Collector of any variations that the applicant wishes to make to the application.

13. Grant or Refusal of licence

- (1) The Chief Collector may;
 - (a) grant a CCA licence for the area, subject to conditions or restrictions and payment of any annual prescribed CCA licence fee; or
 - (b) refuse the application.
- (3) The CCA licence must state:
 - (a) the licensed area; and
 - (b) name of the licensee; and
 - (c) any purpose under section 11 for which the area is licensed.
- (4) The Chief Collector may, by direction, refuse an application to license an area as a Customs controlled area if the Chief Collector is satisfied that area should not be licensed as such because:
 - (a) it is not in the public interest; and
 - (b) it is impracticable or unnecessary to license the area.
- (5) The direction under subsection (4):
 - (a) may cover all or part of the business carried on in the area; and
 - (b) must exempt the area from specified sections of this Act.
- (6) The Chief Collector must, by written notice, inform the applicant of any decision or direction under this section.
- (7) An applicant who is dissatisfied with a decision or direction of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

14. Variation or revocation of conditions

- (1) The Chief Collector may, by notice in writing:
 - (a) vary, suspend or revoke the terms, conditions, or restrictions of the CCA licence;
or
 - (b) revoke the terms, conditions, or restrictions and impose new terms, conditions, or restrictions of the CCA licence.
- (2) A CCA licensee who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

15. Revocation or suspension of licence

- (1) The Chief Collector may suspend or revoke a CCA licence if:
 - (a) a term, condition, or restriction of the licence has been contravened; or

- (b) the licensed area ceases to be used for any of the purposes described in section 11(a) to (f); or
 - (c) the licensee ceases to be the owner or occupier of, or operator in, the licensed area; or
 - (d) the Chief Collector considers that the licensee is no longer a fit and proper person to hold the licence; or
 - (e) any prescribed annual fee is due and has not been paid.
- (2) The Chief Collector must first issue to the licensee a written notice of intention to revoke or suspend the CCA licence unless the Chief Collector considers that there is good reason not to give the written notice of intention.
- (3) The Chief Collector must, in writing, notify the licensee of the revocation or suspension of the CCA licence.
- (4) A CCA licensee who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

16. Surrender of licence

A CCA licensee may surrender the CCA licence by giving 1 months' notice in writing to the Chief Collector.

17. Closing of Customs controlled area

If a CCA licence is suspended, revoked, or surrendered, duty becomes due and payable on all goods within that area that are or were subject to the control of Customs, immediately prior to the suspension, revocation, or surrender, unless the Chief Collector permits the goods to be removed to another Customs controlled area or to be exported.

18. Liabilities not affected by ceasing to act as licensee

The obligations and liabilities under this Act of a CCA licensee for anything done or omitted to be done by the licensee while licensed are not affected by the fact that:

- (a) the licensee ceases to act as such; or
- (b) the licence is surrendered or suspended or revoked.

19. Customs facilities in Customs controlled areas

(1) A CCA licensee must, without any charge to Customs, provide and maintain any operating areas, accommodation, facilities, buildings, equipment, and storage as the Chief Collector determines are reasonably necessary and suitable for the carrying out of the functions and responsibilities of Customs, including any operating area in a Customs controlled area where that operating area is used for—

- (a) the processing of persons arriving in or departing from the Republic; or
- (b) the processing of craft arriving or departing from the Republic; or
- (c) the processing of postal articles arriving in or departing from the Republic; or
- (d) the processing of air cargo arriving in or departing from the Republic; or
- (e) accommodation, facilities, buildings, storage and car parks used by Customs' employees for the above purposes.

(2) A CCA licensee must:

- (a) store goods subject to the control of Customs in a manner and in a location as the Chief Collector may direct; and

(b) in writing, be advised by Customs of a determination under subsection (1) or a direction under paragraph (a).

(3) A CCA licensee who is dissatisfied with a determination under subsection (1) or a direction under subsection (2)(a) may, within 20 working days after the date on which notice of the determination or direction is given, appeal to the Minister against that determination or direction.

20. Storage charges

A CCA licensee must not impose any charge for receiving or storing of any imported goods in the Customs controlled area, subject to any prescribed circumstances and for any prescribed time.

PART 4 - ARRIVAL AND DEPARTURE OF GOODS, PERSONS AND CRAFT

Division 1 – Goods and crafts

21. Goods subject to control of Customs

(1) Goods are subject to the control of Customs:

- (a) for goods that have been imported, from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area; or
- (b) for goods that are lawfully removed from a Customs controlled area under a conditional permit granted under section 72(1)(c), until any time as the Chief Collector is satisfied that the conditions of the permit have been met; or
- (c) for goods to be exported (whether under drawback or not) and are in a package in which a Customs seal has been used, from the time when the Customs seal is first used until the exportation of the goods to a point outside the Republic; or
- (d) for goods to be exported (whether under drawback or not) under a Customs-approved secure exports scheme, from the time when the goods are first secured in a Customs-approved secure package until the exportation of the goods to a point outside the Republic; or
- (e) for goods to be exported under drawback, from whichever is the earlier of the following times until the exportation of the goods to a point outside the Republic:
 - (i) the time of the claim for the drawback; or
 - (ii) the time when the goods are brought to a Customs controlled area (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation); or
- (f) for goods to be exported otherwise than under drawback, from the time when the goods are brought to a Customs controlled area for export, until their exportation to a point outside the Republic; or
- (g) for goods on board a craft described in section 154(1), at all times that the craft is within the Republic;
- (h) for goods manufactured in a Customs controlled area, from the time of manufacture until the goods are lawfully removed for home consumption

- from a Customs controlled area, or the goods are exported to a point outside the Republic, whichever happens first; or
- (i) for goods owned by or in the possession of an internationally ticketed passenger, or an international crew member who is using air or sea travel for a domestic sector or a domestic passenger who is using air or sea travel for a domestic sector, the goods are—
 - (i) brought into a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from the Republic;
 - (ii) accepted by carriage by an airline or shipping company—
until the time when, at the end of the domestic sector, the goods are lawfully removed from a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from the Republic.
 - (j) for domestic cargo (not being goods to which paragraph (i) applies), from the time when the goods are brought within a Customs controlled area that is in a Customs place until the time when the goods are lawfully removed from that or any other Customs controlled area.
- (2) For the purposes of subsection (1), goods that are removed from a Customs controlled area to another Customs controlled area are not removed for home consumption.

22. Advice of arrival, etc.

- (1) The person-in-charge of a craft that is en route to the Republic from a point outside the Republic must, unless approved by the Chief Collector:
- (a) give to Customs, in a form and manner (for example, in an electronic form and manner) as may be approved in writing by the Chief Collector (either generally or for particular case or class of cases) a prescribed advance notice of 1 or more of the following matters—
 - (i) the impending arrival of the craft;
 - (ii) its voyage;
 - (iii) its passengers;
 - (iv) its crew;
 - (v) its cargo for discharge within the Republic (whether commercial or non-commercial);
 - (vi) its commercial cargo not intended for discharge within the Republic;
 - (vii) the Customs place at which the craft will arrive; and
 - (b) on arriving within the Republic, proceed directly to that Customs place, unless directed elsewhere by a Customs officer.
- (2) The owner or operator of the craft referred to in subsection (1), or the owner's or operator's agent, may provide the information referred to in subsection (1)(a) to Customs on behalf of the person in charge of the craft.

23. Requirement to answer questions

- (1) This section applies to any of the following:
- (a) a craft that has arrived in the Republic from a point outside the Republic;
 - (b) a craft departing from the Republic for a point outside the Republic;

- (c) a craft that is within the Republic and that is carrying international cargo or international crew or any international passenger, whether or not the craft is also carrying domestic cargo;
 - (d) any other craft that is within the Republic and that a Customs officer has reasonable cause to suspect has been, or is about to be, involved in the commission of an offence against this Act or the importation or exportation of any dutiable, uncustomed, prohibited, or forfeited goods.
- (2) The person-in-charge of, the owner of, any member of the crew of, and any passenger on a craft to which this section applies must—
- (a) answer any question asked by a Customs officer relating to the craft and its voyage and any persons or goods that are or have been carried by the craft; and
 - (b) immediately, at the request of any Customs officer, produce any documents within that person's possession or control relating to any of those matters.
- (3) A person referred to in section 161(1) must:
- (a) answer any question asked by a Customs officer under section 163; and
 - (b) produce any document within the person's possession or control that a Customs officer demands under section 164.

24. Bringing-to of ship

- (1) The master or the person-in-charge of a ship arriving within the Republic must, on being directed by a Customs officer to do so:
- (a) stop and bring the ship to for boarding; and
 - (b) ensure that the ship remains stopped until a Customs officer directs that the ship may proceed.
- (2) The craft carrying the Customs officer or officers must identify itself as being a craft in the service of the Republic.
- (3) The master of the ship or the person-in-charge must by all reasonable means facilitate the boarding of the ship by Customs officers.
- (4) The master of a ship within the Republic must, if so directed by any Customs officer acting with the authority of the Chief Collector, cause that ship to leave the Republic immediately.
- (5) A Customs officer who proposes to give a direction under subsection (4) must consult with the Chief Collector or a person authorised by the Chief Collector.

25. Craft to arrive at nominated Customs place

- (1) Subject to sections 22 and 26, the person in charge of a craft:
- (a) that arrives within the Republic on a journey from a point outside the Republic;
 - (b) that is carrying—
 - (i) persons brought in that craft or any other craft from a point outside the Republic; or
 - (ii) goods subject to the control of Customs brought in that craft or any other craft from a point outside the Republic,—
- must ensure that the craft lands, anchors, or otherwise arrives only at a Customs place, which, for a craft to which section 22 applies, must be the Customs place nominated by that person under that section.

(2) On arrival at the nominated Customs place or Customs controlled area within that place, and until an inward report under section 27 has been made, a person may not leave or board the craft unless authorised to do so by a Customs officer.

26. Craft arriving at place other than nominated Customs place

(1) Section 25 does not apply to a craft:

- (a) that is required or compelled to berth, land, anchor, or otherwise arrive at a place other than a Customs place nominated under section 22(1)(a), if the arrival—
 - (i) is required by any statutory or other requirement relating to navigation; or
 - (ii) is compelled by accident, stress of weather, or other necessity; or
- (b) that is authorised by the Chief Collector to berth, land, anchor, or otherwise arrive at a place other than a Customs place.

(2) An authorisation given under subsection (1)(b) may be granted subject to any conditions the Chief Collector considers appropriate, including conditions about the passengers and goods that may be carried on the craft.

(3) The Chief Collector may not grant any authorisation under subsection (1)(b) without consulting the Secretary responsible for:

- (a) the Department of Justice and Border Control;
- (b) the Department of Health;
- (c) the Directorate of Civil Aviation (if the proposed authorisation relates to an aircraft); and
- (d) the Ports Authority (if the proposed authorisation relates to a ship); and
- (e) any other Department or government agency whose operations may, in the Chief Collector's opinion, be affected by the granting of an authorisation under subsection (1)(b).

(4) If any craft berths, lands, anchors, or otherwise arrives at a place other than a Customs place by reason of an authorisation under subsection (1)(b):

- (a) the same powers may be exercised under this Act in relation to that craft as if it had arrived at a Customs Place under Part 4, and the same obligations apply; and
- (b) the same powers may be exercised under this Act in relation to persons and goods on that craft as if those persons or goods were in a Customs controlled area, following arrival of the craft under Part 4, and the same obligations apply.

(5) The person-in-charge of the craft—

- (a) must immediately report to a Customs officer or to a police officer; and
- (b) must not, without the consent of a Customs officer, permit any goods carried in the craft to be unloaded from it or any of the crew or passengers to depart from its vicinity; and
- (c) must comply with any directions given by a Customs officer in respect of any goods, crew or passengers carried in the craft.

(6) Subject to section 68(a), a member of the crew and a passenger on the craft may not without consent of a Customs officer:

- (a) unload goods from the craft; or
- (b) depart from the vicinity of the craft,—

and they must comply with any directions given by a Customs officer.

(7) If a craft is directed by a Customs officer under section 24(1)(b) to arrive at a place other than the Customs place nominated under section 24(1)(a), a person may not depart from or board the craft unless authorised to do so by a Customs officer.

27. Inward report

(1) Unless a craft is exempted by the Chief Collector, this section applies to a craft:

- (a) that arrives within the Republic on a journey from a point outside the Republic;
or
- (b) that is carrying—
 - (i) persons; or
 - (ii) goods subject to the control of Customs,—

brought in that craft or any other craft from a point outside the Republic.

(2) On the arrival at a Customs place of craft to which this section applies, the person-in-charge or the owner of the craft, must:

- (a) deliver to Customs within such time or times as may be prescribed an inward report in such form and manner and containing such particulars verified by declaration as may be prescribed and accompanied by such supporting documents as the Chief Collector may require; and
- (b) comply with any Customs direction as to the movement of the craft within the Customs place, and as to the unloading of goods or the disembarkation of crew or passengers from the craft.

(3) The particulars and supporting documents referred to in subsection (2)(a) need not include information that has already been supplied to Customs, in any form and manner approved in writing by the Chief Collector, under section 22(1)(a) or otherwise.

Division 2 – Arrival of persons

28. Persons arriving in the Republic to report to Customs officer or Police station

(1) Unless otherwise required under any provision of this Act, a person arriving in the Republic must, on his or her arrival, report to a Customs officer or to a Police station immediately.

(2) A person who reports to a Customs officer or to a Police station under subsection (1) must remain at the place where the person reported for any reasonable time as Customs may require for the purposes of enabling any Customs officer to exercise in relation to that person any power under this Act.

29. Disembarkation

(1) Subject to prescribed exemptions, a person who is on board a craft that has arrived in the Republic from a point outside the Republic must comply with any Customs direction concerning disembarkation.

(2) For the purposes of this section, a Customs direction includes a direction given by the person-in-charge of the craft or by a crew member at the direction of a Customs officer.

(3) Subject to prescribed exemptions, a person who has disembarked from a craft to which this section applies must, unless otherwise directed by Customs:

- (a) go to a Customs controlled area; and
- (b) remain there for any reasonable time as Customs may require for the purposes of enabling any Customs officer to exercise in relation to that person any power under this Act.

30. Baggage to be presented

(1) Subject to prescribed exemptions, a person who disembarks from a craft that has arrived in the Republic from a point outside the Republic or a craft that is at the end of a domestic sector must:

- (a) make his or her accompanying baggage available for examination by a Customs officer; and
- (b) comply with any Customs direction relating to the movement of the baggage within Customs place or Customs controlled area or from any craft to a Customs controlled area.

(2) A person who is moving or handling the baggage referred to in subsection (1) must comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from any craft to a Customs controlled area.

Division 3 – Departure of persons

31. Persons departing from the Republic to depart from Customs place

Subject to section 41 and to any prescribed exemptions or unless otherwise authorised by Customs, a person must not depart from the Republic unless the person departs from a Customs place.

32. Embarkation

A person preparing to board a craft for departure from the Republic must comply with any Customs direction given to the person concerning embarkation.

33. Outgoing baggage to be presented

(1) Subject to any prescribed exemptions, a person who arrives at a Customs place or a Customs controlled area for embarkation onto a craft that has, as its destination, a point outside the Republic must:

- (a) make his or her accompanying baggage available for examination by a Customs officer; and
- (b) comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from a Customs controlled area to any craft.

(2) A person who is moving or handling the baggage referred to in subsection (1) must comply with any Customs direction on the movement of the baggage within the Customs place or Customs controlled area or from a Customs controlled area to any craft.

Division 4 – Further requirements relating to persons arriving in or departing from the Republic

34. Use of electronic communication devices prohibited in certain place

(1) This section applies to a Customs place or Customs controlled area that is used by persons arriving in or departing from the Republic.

(2) A Customs officer may erect a sign prohibiting, in a place or area to which this section applies, the use of any electronic communication device identified on the sign (by words, or images or both).

(3) If a sign has been erected in a place under subsection (2), a Customs officer may require a person in that place not to use, or to stop using, an electronic communication device identified on the sign.

(4) A person must comply with a requirement by a Customs officer under subsection (3).

(5) In this section, 'electronic communication device' includes an electronic communication device (except for a device that is being used to assist with a disability) that is capable of 1 or more of the following actions:

- (a) transmitting sound;
- (b) computing information;
- (c) functioning as a telephone;
- (d) communicating in any other way using any technology (including telecommunication, radio communication, and broadcasting technology).

35. Completion of processing under immigration and quarantine laws

(1) This section applies to a person in a designated place who has arrived in the Republic or who departs, or attempts to depart, from the Republic.

(2) The person must remain in the designated place until the processing, under the Immigration Act 2014 and, if applicable, the Quarantine Act 1908, of that person's arrival in, or departure from, the Republic, is completed.

(3) A Customs officer may direct the person to comply with the person's obligation under subsection (2).

(4) The processing referred to in subsection (2) is completed when:

- (a) the person has complied with all obligations imposed on the person, in respect of that person's arrival in, or departure from, the Republic, under the Immigration Act 2014 and, if applicable, the Quarantine Act 1908; and
- (b) the powers and duties under those Acts that are, in relation to the person, required to be exercised or performed in the designated place have, so far as practicable, been exercised or performed in that place.

(5) In this section:

'authorised officer' means an officer authorised under the Immigration Act 2014 or the Quarantine Act 1908

'designated place' means:

- (a) a Customs controlled area; or
- (b) a Customs place; or
- (c) a place approved by the Chief Collector for the purposes of—
 - (i) the arrival of a craft in the Republic; or
 - (ii) the departure of a craft from the Republic; or
- (d) a Police station to which a person reports under section 28(1);

'processing' includes:

- (a) consideration by any authorised officer as to the applicability of powers and duties under the Immigration Act 2014 or the Quarantine Act 1908; and
- (b) reconsideration by any authorised officer, in the light of any information, of a previous exercise or performance of a power or duty under the Immigration Act 2014 or the Quarantine Act 1908; and
- (c) any reasonable time following a request by a Customs officer that an authorised officer who is not present at the designated place

consider, exercise or perform a particular power or duty under the Immigration Act 2014 or the Quarantine Act 1908 that—

- (i) may, in the opinion of the Customs officer, be applicable to the person; and
- (ii) may not be exercised or performed by an authorised officer present at the designated place at the time of the request; but
- (iii) may be exercised or performed by the authorised officer to whom that request is made.

36. Cases requiring investigation for public health or law enforcement purposes

(1) This section applies to a person in a designated place who has arrived in the Republic or who departs, or attempts to depart, from the Republic, if a Customs officer has reasonable cause to suspect that the person:

- (a) is, under an enactment, liable to be detained because of an infectious disease; or
- (b) is liable to be arrested under a warrant issued by a court or by any registrar; or
- (c) is, in attempting to depart from the Republic or in attempting to remove another person from the Republic, contravening, or about to contravene, an enactment or an order issued by a court; or
- (d) is liable to be prosecuted for an offence punishable by imprisonment; or
- (e) has contravened any of the following enactments—
 - (i) Quarantine Act 1908;
 - (ii) Illicit Drugs Control Act 2004;
 - (iii) any prescribed enactment, being an enactment that contains an offence involving the unlawful entry into the Republic, or the unlawful removal from the Republic of a person, matter, or thing; or
- (f) is endangering, or threatening to endanger the life, health, or safety of a person or group of persons.

(2) The Customs officer may direct the person to remain in the designated place for the purposes of obtaining the attendance of, or making inquiries of, another officer who is authorised, in respect of a matter specified in subsection (1), to do 1 or more of the following:

- (a) question the person;
- (b) ascertain or determine the status of the person;
- (c) detain the person;
- (d) arrest the person.

(3) The person must comply with any directive given under this section.

(4) A direction under this section ceases to have effect 4 hours after it is given.

(5) In this section:

‘another officer’ means:

- (a) a police officer; or
- (b) a court officer responsible for serving or carrying out of court processes; or
- (c) a public servant or other employee or agent of a government Department or agency.

‘designated place’ means:

- (a) a Customs controlled area; or
- (b) a Customs place; or
- (c) a place approved by the Chief Collector for the purposes of—

- (i) the arrival of a craft in the Republic; or
- (ii) the departure of a craft from the Republic.

Division 5 – Departure of craft

37. Clearance of craft

(1) A person-in-charge of a craft that has, as its destination, a point outside the Republic may not cause that craft to depart from any Customs place unless that person has received a certificate of clearance in the prescribed form.

(2) Subject to any prescribed exemptions, a person-in-charge of a craft that has arrived in the Republic from a point outside the Republic may not cause that craft to depart from the place in the Republic that it first arrived at, or from any subsequent place of call within the Republic, without the permission of Customs and subject to the production to Customs of any documents that the Chief Collector may require and to any conditions imposed by the Chief Collector.

(3) The Chief Collector may exempt a craft from the requirements for a certificate of clearance under subsection (1).

38. Certificate of clearance

(1) Before a certificate of clearance is granted to the person-in-charge of a craft to which section 37 applies, the person must:

- (a) deliver to Customs, within any time or times prescribed, an outward report in the prescribed form and manner, that contains the prescribed particulars verified by declaration, and which is accompanied by any supporting documents as the Chief Collector may require; and
- (b) answer any question asked by a Customs officer about the craft and its passengers, crew, cargo, stores and its intended voyage or journey; and
- (c) produce any other documents as may be required by a Customs officer relating to the craft and its passengers crew, cargo, stores and its intended voyage of journey; and
- (d) comply with all requirements in this or any other Act concerning the craft and its passengers, crew, cargo, stores, and its intended voyage or journey.

(2) The Chief Collector may approve that a person-in-charge of a craft is not to comply with the requirement of subsection (1).

39. Boarding of outward craft

The person-in-charge of a craft departing from a Customs place, whether or not the immediate destination of the craft is a point outside the Republic, must, if required to do so by any Customs officer, by all reasonable means, facilitate boarding by Customs officers.

40. Production of certificate of clearance

The person in charge of a craft to whom a certificate of clearance has been granted must, on demand by a Customs officer, produce the certificate of clearance for examination by the officer and answer any question that the officer may put to him or her about the craft and its passengers, crew, cargo, stores and its intended voyage or journey.

41. Departure to be from Customs place only

- (1) Subject to any prescribed exemptions and subsection (2), except with the prior permission of the Chief Collector for departure, a person-in-charge of a craft must not:
- (a) cause that craft to depart for a point outside the Republic from a place within the Republic other than a Customs place; or
 - (b) having obtained a certificate of clearance from a Customs place in the Republic to depart for any point outside the Republic, cause that craft—
 - (i) to not depart immediately from that place;
 - (ii) to go to any other place in the Republic.
- (2) Subsection (1) does not apply to a craft:
- (a) that is required to berth, land, anchor, or otherwise return to a place in the Republic that is not a Customs place, if this return—
 - (i) is required by any statutory or other requirement relating to navigation; or
 - (ii) is compelled by accident, stress of weather, or other necessity; or
 - (b) that is authorised to depart for a point outside the Republic from a place in the Republic other than a Customs place, by the Chief Collector.
- (3) Section 26(2) to (4) apply, with modifications, to:
- (a) an authorisation given by the Chief Collector under subsection (2)(b); and
 - (b) any departure from a place in the Republic (other than a Customs place) in reliance on the authorisation.

42. Regulations for stores on craft

The Cabinet may, acting on the advice of the Minister, make regulations prescribing:

- (a) the classes of goods that are, or are not, regarded as stores for the use of passengers and crew or the service of craft about to depart from any Customs place; and
- (b) the conditions under which any stores may be shipped free of duty or under drawback of duty; and
- (c) the conditions under which any such stores are subject to duty, and the form and manner in which those stores must be entered.

PART 5 - CUSTOMS ACCESS TO AND USE OF INFORMATION ABOUT BORDER-CROSSING GOODS, PERSONS AND CRAFT

Division 1 – General

43. Definition

In this Part:

‘border crossing goods’ means goods that are recorded by a person concerned in the movement of goods, persons, or craft:

- (a) as having been imported into, or exported from, the Republic; or
- (b) as being imported into, or exported from, the Republic; or
- (c) as intended to be imported into, or exported from, the Republic;

‘border-crossing person or craft’ means a person (for example, a passenger, or a member of the crew of a craft) who or craft that, is recorded by a person concerned in the movement of goods, persons, or craft:

- (a) as having arrived in or departed from the Republic; or

- (b) as arriving in, or departing from the Republic; or
 - (c) as intending to arrive in, or depart from, the Republic;
- ‘person concerned in the movement of goods, persons, or craft’ means any of the following:
- (a) an owner or an operator of a craft that carries or transports goods or persons, or both, from the Republic to a point outside the Republic, or from a point outside the Republic to the Republic, for commercial purposes, or the agent of an owner or an operator of that kind;
 - (b) a travel operator or the agent of a travel operator;
 - (c) an owner, occupier, or operator of a Customs controlled area used for the purpose specified in section 11(d) or (e);
 - (d) an operator of a business that handles, packs, stores, or transports goods that are to be transported from the Republic to a point outside the Republic;
 - (e) any persons or classes of persons, involved in any other way in the carriage, handling or transportation of goods, or persons, or both, from the Republic to a point outside the Republic or from a point outside the Republic to the Republic, for commercial purposes, being persons or classes of persons prescribed for the purposes of this paragraph;
- ‘travel operator’ means a person who organises the carriage, handling, or transportation of goods or persons, or both, from the Republic to a point outside the Republic or from a point outside the Republic to the Republic, for commercial purposes.

44. Purpose

- (1) The purpose of this Part is to facilitate:
 - (a) the exercise or performance of powers, functions, or duties under this Act;
 - (b) the prevention, detection, investigation, prosecution and punishment of offences that are, or that if committed in the Republic would be—
 - (i) Customs offences of any kind; or
 - (ii) other offences punishable by imprisonment;
 - (c) the processing of international passengers at the border by public authorities;
 - (d) the protection of border security;
 - (e) the protection of the health and safety of members of the public.
- (2) To that end, this Part:
 - (a) requires certain persons concerned in the movement of goods, persons, or craft to give to Customs access to certain information about border-crossing goods, persons, and craft; and
 - (b) controls the use of that information by Customs.

Division 2 – Access to information

45. Persons to whom section 46 or 47 applies

Section 46 or 47 applies to a person only if the person:

- (a) is a person concerned in the movement of goods, persons or craft; and
- (b) has been required by the Chief Collector by notice in writing to comply with that section on and after a date specified in the notice in writing.

Division 3 – Information to which access must be given

46. Information about border-crossing craft

- (1) A person to whom this section applies must give Customs access, on and after the date specified in the notice referred to in section 45(b), to information:
- (a) that is of the kind specified in subsection (2); and
 - (b) that the person holds (whether in the Republic or overseas) or has access to about any border-crossing craft.
- (2) The information referred to in subsection (1)(a) is information about:
- (a) the border-crossing craft;
 - (b) what it is carrying or transporting;
 - (c) its journey to or from the Republic; and
 - (d) its arrival at, or departure from, the Republic, whether that journey or arrival or departure has occurred, is occurring or will occur.
- (3) That information may include, but is not limited to, the following information about the border-crossing craft:
- (a) if the craft is carrying or transporting goods—
 - (i) loading and discharge details;
 - (ii) goods storage details; and
 - (iii) goods records; and
 - (b) if the craft is carrying or transporting persons—
 - (i) the number of persons on the craft (whether passengers, or crew or other persons); and
 - (ii) the seating arrangements or on-board accommodation arrangements;
 - (iii) baggage storage details; and
 - (c) if the craft is carrying or transporting goods and persons, the information in paragraphs (a) and (b).

47. Information about border-crossing persons

- (1) A person to whom this section applies must give Customs access, on and after the date specified in the notice referred to in section 45(b), to information:
- (a) that is of the kind specified in subsection (2); and
 - (b) that the person holds (whether in the Republic or overseas) or has access to about any border-crossing person.
- (2) The information referred to in subsection (1) is information held by the person, or to which the person has access, for the purpose of facilitating the border crossing person's travel to, or departure from, the Republic, whether that travel or departure has occurred, is occurring, or will occur.
- (3) That information may include, but is not limited to, any of the following information about the border-crossing person:
- (a) the person's name, date of birth, place of birth, nationality, sex and passport details;
 - (b) the person's contact details (including telephone number, address and email address);
 - (c) information identifying the craft on which the person has travelled, is traveling, or intends to travel;
 - (d) any special conditions or arrangements the person has made regarding his or her travel;

- (e) where the person booked his or her travel;
- (f) on what date the person booked his or her travel;
- (g) whether the person has checked baggage.

48. Further provisions about giving Customs access to information under section 46 or 47

(1) A person to whom section 46 or 47 applies must give Customs access to the information referred to in section 46 or 47, in the form and manner prescribed (for example, in an electronic form and manner).

(2) The Chief Collector may, by notice in writing, in all or any specified circumstances, exempt a person to whom section 46 or 47 applies:

- (a) from complying with some or all of the person's obligations under that section; and
- (b) from complying with some or all of the person's obligations under subsection (1).

(3) Section 46 or 47 does not require a person to whom the section applies to give Customs access to information the person holds or has access to about an employee (for example, about a member of the crew of a craft) unless the information is information of a kind also generally held by the person, or to whom the person generally has access, in relation to passengers.

Division 4 – Use of information to which access must be given

49. Controls on use by Customs of information

(1) Customs may without warrant view all information to which access is given under section 46.

(2) However, Customs may view information to which access is given under section 47 only as provided in sections 50 to 53.

(3) Section 319 applies to the collection, use and disclosure by Customs of information viewed by Customs under this section or sections 50 to 53.

50. Information about travel within 28-day period – (1) Information to which access is given under section 47 may be viewed by Customs without warrant if it is information about travel within the 28-day period.

(2) Customs may without warrant search information that it may view under subsection (1) to determine whether that information includes information that is relevant to search criteria specified by Customs.

(3) However, if information is viewed under subsection (1), Customs may collect, use and disclose that information under section 319 whether or not it came to Customs as result of a search.

(4) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not likely to be, frustrated if the viewing or searching were delayed until a warrant under section 52 could be obtained to authorise it.

(5) For the purposes of this section and section 51, 'information about travel within the 28 day period' means information that, at any particular time, relates:

- (a) to an arrival in or departure from, the Republic that, according to the information—

- (i) occurred within 14 days before that time; or
- (ii) is occurring at that time; or
- (iii) will occur within 14 days after that time; or
- (b) to travel that, according to the information, occurred, is occurring, or will occur, in connection with an arrival or departure referred to in paragraph (a)—
 - (i) whether that travel is travel within the Republic to overseas; and
 - (ii) whether that travel is travel that occurred, is occurring, or will occur, before or after that arrival or departure of that kind.

51. Information about other travel may be searched for information relating to travellers within 28-day period

- (1) In this section, 'information about other travel' means information:
 - (a) to which access is given under section 47; and
 - (b) that is not information about travel within the 28-day period.
- (2) This section applies to the following situation:
 - (a) Customs, in considering information viewed under section 50, finds information about travel within the 28-day period that relates to an arrival or departure, and to travel, by a person:
 - (b) Customs wishes—
 - (i) to search information about other travel to determine whether it includes information that relates to that person; and
 - (ii) to view any information that relates to that person and is found as a result of the search.
- (3) In that situation, Customs may without warrant—
 - (a) search information about other travel to determine whether it includes information that relates to the person; and
 - (b) view information in accordance with subsection (5).
- (4) However, the search may be conducted only if it can be completed within 14 days after the arrival or departure to which the information about travel within the 28-day period relates (see section 50(5)(a)).
- (5) Customs must not view information about other travel unless that information relates to the person and is found as a result of the search.
- (6) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not likely to be, frustrated if the viewing or searching were delayed until a warrant under section 52 could be obtained to authorise it.

52. Search and viewing warrants

- (1) This section applies to any of the following situations:
 - (a) the Chief Collector considers, in the light of information of any kind that is available to Customs, that there are reasonable grounds to suspect that—
 - (i) there exists a risk or threat relevant to the purpose stated in section 44(1); or
 - (ii) a relevant offence (as defined in subsection (6)) has been, is being, or will be committed;
 - (b) Customs wishes—
 - (i) to search information to which access is given under section 47 to determine whether it includes information that is relevant to search

- criteria specified by Customs (being search criteria that are reasonably related to the information available to Customs that gives rise to the reasonable grounds to suspect required by paragraph (a)); and
- (ii) to view any information that is relevant to the search criteria specified by Customs and is found as a result of the search;
 - (c) the search cannot be conducted and the viewing done under section 50 or 51, or Customs considers it would be inexpedient for those things to be done under section 50 or 51.
- (2) In that situation, the Chief Collector may, by application in writing made on oath, apply to a Judge for a search and viewing warrant authorising:
- (a) the carrying out of the search within 14 days after the day on which the warrant is granted (or within any extension of that period granted by a Judge on an application in writing for the purpose made within that period); and
 - (b) the viewing by Customs of any information that is relevant to the search criteria specified by Customs and that is included in information to which access is given under section 47, but of no other information.
- (3) The application must give details of the reasonable grounds to suspect required by subsection (1), of the information available to Customs that gives rise to those reasonable grounds to suspect, and of the search criteria specified by Customs, and it must also indicate whether the search is to be of all, or of only a specified part or parts, of the information to which access is given under section 47.
- (4) On an application under subsection (2), a Judge may grant a search and viewing warrant in the prescribed form, but only if he or she is satisfied that:
- (a) the reasonable grounds to suspect required by subsection (1) exist; and
 - (b) the search criteria specified by Customs are reasonably related to the information available to Customs that gives rise to those reasonable grounds to suspect.
- (5) The warrant is sufficient authority for the doing of the things specified in subsection (2)(a) and (b).
- (6) In this section and section 53, 'relevant offence' means an offence described in section 44(1)(b), or relevant to the purpose stated in section 44(1).

53. Search and viewing without warrant in emergencies

- (1) This section applies to the following situation:
- (a) the situation specified in section 52(1):
 - (b) the Chief Collector considers that, if he or she were to apply to a Judge for a search and viewing warrant under section 52, the Judge would grant the warrant:
 - (c) the Chief Collector also considers that delaying a search and any resulting viewing until a search and viewing warrant can be obtained under section 52 would create a real risk that—
 - (i) the countering of the risk or threat referred to in section 52(1)(a)(i) would be frustrated; or
 - (ii) the prevention, detection, investigation, prosecution, or punishment of the relevant offence would be frustrated.
- (2) In a situation in subsection (1), the Chief Collector may, with no further authority other than this section, have the things specified in section 52(2)(a) and (b) done as if the doing of those things were authorised by a search and viewing warrant under section 52(4).

(3) However, if the Chief Collector acts under subsection (2), he or she must within 5 working days apply under section 52(2) for a search and viewing warrant in relation to the matter.

54. Procedure if viewing of information not authorised

(1) This subsection applies to both of the following situations:

- (a) the 5 working days period referred to in section 53(3) expires and the Chief Collector has not made the application required by that subsection:
- (b) the application required by section 53(3) is made but, in response to it, either no warrant is granted under section 52(4), or a warrant is granted under section 52(4) authorising the doing of only some of the things done in reliance on section 53(2).

(2) In a situation to which subsection (1) applies, things done in reliance on section 53(2) must, to the extent that the doing of those things is not authorised by a warrant granted under section 52(4), be treated for the purposes only of the countering of the risk or threat referred to in section 52(1)(a)(i) or of the prevention, detection, investigation, prosecution, or punishment of the relevant offence, as if they were done without the authority of section 53 or of a warrant granted under section 52(4).

(3) In a situation to which subsection (1) applies:

- (a) the Customs must destroy immediately information viewed by it in reliance on section 53(2) and that is collected by it for a purpose specified in section 305 if the viewing of that information is not authorised by a warrant granted under section 52(4); and
- (b) other persons or bodies must destroy immediately information viewed by the Customs in reliance on section 53(2) and disclosed by it to the other persons or bodies for a purpose specified in section 305(2) and collected by the other persons or bodies if the viewing of that information is not authorised by a warrant granted under section 52(4).

55. Security of applications for warrants

(1) As soon as an application under section 52(2) has been determined by the Judge, the Registrar must place all documents relating to the application (except the warrant itself) in a packet, seal the packet, and thereafter keep it in safe custody, except as provided in this section.

(2) Despite any enactment or rule of law or rules of Court entitling a party to proceedings to demand the production of documents, a party of that kind is not entitled to demand the production of documents held in safe custody under subsection (1), except in accordance with this section.

(3) A party of that kind who requires the production of a document held in safe custody under subsection (1) must, except in a case to which subsection (9) or (10) applies, apply in writing to the Registrar, who must promptly notify the Chief Collector.

(4) If, within 3 days after notice is given to the Chief Collector under subsection (3), the Chief Collector gives written notice to the Registrar that the Chief Collector intends to oppose the production of the documents, the Registrar must refer the matter to a Judge.

(5) If the Chief Collector does not give the written notice under subsection (4), the Registrar must produce the documents to the party applying for production.

(6) If a matter is referred to a Judge under subsection (4), both the person requesting production of the documents and the Chief Collector opposing production must be given

an opportunity to be heard.

(7) The Judge may order that all or a specified part of a document, the production of which is in dispute, not be produced if the Judge is satisfied that:

- (a) the document or part contains information of a kind referred to in section 56(1); and
- (b) production of that information would involve disclosure of a kind referred to in section 56(2).

(8) Subject to subsection (7), the Judge must order the production of the documents to the party requesting it.

(9) If a request for the production of a document kept in safe custody under subsection (1) is made in the course of proceedings presided over by a Judge and the request is opposed, the Judge must hear and determine the matter as if it had been referred to him or her under subsection (4).

(10) If a request of that kind is made in the course of any other proceedings, the presiding judicial officer must promptly refer the matter to a Judge to be heard and determined under subsection (9).

(11) Despite anything in this section, a Judge who is presiding over any proceedings in which the issue of a warrant under section 52 is in issue is entitled to inspect any relevant document held under subsection (1).

56. Information and disclosure in section 55(7)

(1) Information falls within section 55(7)(a) if it:

- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the Customs; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the Customs; or
- (c) has been provided to the Customs by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the Customs because the government or agency or organisation by which the information has been provided will not consent to the disclosure.

(2) Disclosure of information falls within section 55(7)(b) if the disclosure would be likely:

- (a) to prejudice the security or defence of the Republic or the international relations of the Government of the Republic; or
- (b) to prejudice the entrusting of information to the Government of the Republic on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.

(3) In this section:

‘country’ includes any State, territory, province, or other part of a country;

‘international organisation’ means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind.

57. Disposal of information collected by Customs

(1) This section applies to information:

- (a) viewed under any of sections 49 to 53; and
- (b) collected for a purpose specified in section 305(2).

(2) The Customs must, at least once every 6 months after this section comes into force, determine whether the retention of the information by the Customs continues to be necessary for that purpose and, if it is not, must dispose of the information promptly.

(3) This section does not limit section 54(3)(a).

58. Protection of persons acting under authority of this Part

The Government, the Chief Collector, a Customs officer or an authorised person is not liable for anything done or omitted to be done or purporting to have been done, in good faith or with reasonable care, when carrying out any function or power conferred by this Part.

59. Part does not limit other access to or use of information

This Part does not:

- (a) prevent a person concerned in the movement of goods, persons, or craft from giving Customs access to information otherwise than as required by or under this Part;
- (b) prevent Customs from using otherwise than as provided in this Part information to which Customs is given access otherwise than as required by or under this Part;
- (c) affect any obligation a person may have to give Customs advance notice of matters under section 22;
- (d) affect any obligation a person may have under this Act to make an entry in respect of goods that are imported or that are to be imported; or
- (e) affect any powers Customs has to collect and use information under section 305.

PART 6 - ENTRY AND ACCOUNTING FOR GOODS

Division 1 – Importation of goods

60. Entry of imported goods

(1) Subject to any order made under section 63, goods that are imported or that are to be imported must be entered by the importer:

- (a) in a prescribed form and manner (including by electronic means into a computer or other device); and
- (b) within a prescribed time or any further time as the Chief Collector may allow.

(2) If an entry required by this section relates to goods that are dutiable under the volume of alcohol present in the goods, the person making the entry must, in the prescribed manner, specify the volume of alcohol.

(3) A person entering goods under this section must:

- (a) answer any question asked by a Customs officer with respect to the goods; and
- (b) on the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.

- (4) If:
- (a) default is made in the entry of goods under this section; or
 - (b) the goods are not claimed within a prescribed period,
- duty becomes due and payable on the goods, and the goods may be sold or otherwise disposed of by the Chief Collector.

61. Provisional entries

- (1) If the importer:
- (a) cannot immediately supply the full particulars for making an entry; and
 - (b) makes (by himself or herself or the importer's agent) a declaration to that effect before the Chief Collector or other Customs officer,—
- the importer or agent must make a provisional entry in the prescribed form.
- (2) A provisional entry, on being passed by the Chief Collector, is warrant for the landing and examination of the goods by the importer.
- (3) The importer of the goods included in a provisional entry:
- (a) must make a complete entry within 7 days after the passing of that entry or within any further time allowed by the Chief Collector; and
 - (b) if the importer makes default in so doing, the goods may be dealt with by the Chief Collector as if no provisional entry had been made.
- (4) A complete entry of the goods included in a provisional entry must be made in the same manner as if the provisional entry had not been made.

62. Delivery of goods on provisional entry

- (1) The Chief Collector may, if the Chief Collector thinks fit, deliver goods from the control of the Customs for home consumption pursuant to a provisional entry but only on receiving any security as he or she thinks sufficient to cover the full amount of duty.
- (2) A complete entry of the goods for home consumption must be made by the importer within any time appointed by the Chief Collector.

63. Regulations on entry of imported goods

The Cabinet may make regulations:

- (a) prescribing when an entry is regarded to have been made for the purposes of this Act; and
- (b) prescribing the conditions under which an entry is regarded to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 60(1), subject to any prescribed conditions; and
- (d) prescribing goods or classes of goods that are regarded to have been entered under section 60(1) and the circumstances in which and the conditions subject to which those goods are to be so regarded to have been entered.

64. Production of invoice and declaration

- (1) On the first entry (other than an entry for removal of any goods,) the importer or the importer's agent must:
- (a) produce to the Chief Collector or other Customs officer the invoice for the goods; and

(b) make, and deliver to the Chief Collector or other Customs officer, a declaration in the prescribed form verifying that invoice and setting out the true value for duty purposes of the goods and any other prescribed particulars.

(2) The Chief Collector may direct, in relation to any class or classes of goods or transactions, that a Customs officer, must retain the invoice so produced, or a legible copy made by carbon or other duplicating process by or on behalf of the seller or consignor of the goods.

(3) If any failure to produce the invoice as required by this section is accounted for to the satisfaction of the Chief Collector or Customs officer, proof of its contents by a copy or otherwise may be received instead of its production.

65. Regulations for fees and charges for importation of goods

(1) The Cabinet may, make regulations prescribing fees or charges, or both, that are payable to Customs to meet or assist in meeting costs and expenses incurred by Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the importation of goods.

(2) A provision of Part 9 that relates to the collection and recovery of duty apply to fees and charges under subsection (1), as if those fees and charges were a duty.

(3) Before making regulations under this section, Cabinet must be satisfied that the persons that the Cabinet considers are representative of interests likely to be substantially affected by the proposed order have been consulted about the proposed order to the extent that is reasonably practicable having regard to the circumstances of the case.

(4) For the purposes of subsection (3), Cabinet may take into account any relevant consultation undertaken by or on behalf of Cabinet before this section comes into force.

(5) A failure to comply with subsection (3) does not affect the validity of any order made under subsection (1).

66. Imported goods to be dealt on making of entry

Goods for which entry has been made and passed are immediately to be dealt with pursuant to the entry and this Act for the goods so entered.

67. Cancellation and amendments of entries

(1) The Chief Collector may:

- (a) cancel or amend an entry to prevent duplication of entries or to correct an entry or a part of an entry; and
- (b) subject to section 125, refund a duty relating to the cancellation or amendment of an entry.

(2) A cancellation or amendment of an entry by the Chief Collector under subsection (1) does not affect any penalty, liability to seizure, or criminal liability already accrued or incurred under that entry by the person making it.

(3) A person who is dissatisfied with a decision of the Chief Collector under subsection (1) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

68. Unloading goods

A person may not unload goods that are subject to the control of Customs from a craft except:

- (a) under a permit or other authorisation granted by the Chief Collector, subject to any conditions determined by the Chief Collector; or
- (b) if the safety of the craft, or the goods or persons in the craft, is threatened by collision, fire, the stress of weather or similar circumstances, or such other circumstances as may be prescribed.

69. Craft imported other than as cargo

(1) Despite anything in this Act, an entry must be made on a craft imported into the Republic, other than as cargo, as the Chief Collector may, by public notice, determine for a craft or class of craft.

(2) For the purpose of making entries for a craft imported into the Republic, other than as cargo, the craft is taken to have been imported as cargo and unloaded as such on its arrival.

70. Samples or illustrations

(1) The importer of goods must provide free-of-charge, any samples, illustrations, drawings, documents or plans relating to the goods as may be required by a Customs officer for the purposes of analysis, classification or record.

(2) A sample required to be provided under subsection (1) must be sufficient for the purpose for which it is taken.

Division 2 – Transportation of goods within the Republic

71. Transportation of imported goods

Unless permitted by the Chief Collector, goods that are subject to the control of Customs may not be placed in a craft, vehicle, or other conveyance for transportation within the Republic until entry has been made under section 60(1).

72. Removal of goods from Customs controlled area

(1) Goods that are subject to the control of Customs must not be delivered to or removed from, a Customs controlled area except:

- (a) as provided by this Act; or
- (b) subject to subsection (3), with the permission of a Customs officer after entry has been made and passed in the prescribed form and manner; or
- (c) under a conditional permit or other authorisation granted by the Chief Collector for those goods, subject to any conditions the Chief Collector may determine; or
- (d) by a Customs officer when carrying out his or her duties under this Act.

(2) The Chief Collector may, by notice in writing:

- (a) vary or revoke any conditions of the permit or authorisation; or
- (b) revoke conditions of the permit or authorisation and impose new conditions; or
- (c) revoke the permit or other authorisation.

(3) Despite subsection (1)(b), while goods remain subject to the control of Customs, the Chief Collector may revoke any notice of delivery given for those goods.

(4) A person who is dissatisfied with a decision of the Chief Collector under subsection (1)(c) or subsection (2) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

73. Temporary removal of goods from Customs controlled area

(1) Subject to section 180 and to any other provisions of this Act, the Chief Collector may permit goods to be temporarily removed from a Customs controlled area without payment of duty for any time and in any quantities as he or she may approve.

(2) Goods so removed remain subject to the control of Customs and are treated to be within the Customs controlled area from which they were so removed, and the provisions of this Act continue to apply to them accordingly.

Division 3 – Exportation of goods

74. Entry of goods for export

(1) Subject to any orders made under section 75, goods that are exported or that are to be exported must be entered by the exporter:

- (a) in a prescribed form and manner (including by electronic means into a computer or other device); and
- (b) within a prescribed time or any further time as the Chief Collector may allow.

(2) A person who makes an entry under this section must:

- (a) answer any question relevant to matters arising under this Act asked by a Customs officer with respect to the goods; and
- (b) at the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.

(3) For goods to be exported under drawback, the making of any entry is treated to be the making of claim for drawback.

(4) Unless the Chief Collector determines in any particular case, the right to drawback does not exist for goods placed on a craft before entry has been made and passed.

(5) Unless permitted by the Chief Collector, goods must not be loaded for export until entry has been made in the prescribed form and manner.

(6) Despite an entry being passed under subsection (5), the Chief Collector may revoke the goods' permission to export if the Chief Collector has reasonable cause to suspect the goods endanger, or threaten to endanger:

- (a) border security; or
- (b) the Republic's trade interests or international obligations; or
- (c) the life, health, or safety of a person or group of persons; or
- (d) the safety of the craft that will carry the goods, or of other goods to be carried on that craft.

75. Regulations for entry of goods for export

The Cabinet may make regulations:

- (a) exempt specified goods or goods of a specified class from the requirements of section 74(1), subject to conditions prescribed in the order; and
- (b) prescribe goods or classes of goods that are to be treated to have been entered under section 74(1) and the circumstances in which and the conditions subject to which those goods are to be so treated.

76. The Republic's certificates of origin for goods for export to party to free trade agreement

(1) A certification body authorised by the Chief Collector under section 77 (a ‘certification body’) for a party to a free trade agreement may issue a Nauru certificate of origin of goods for export to that party.

(2) A Nauru certificate of origin, in respect of goods for export to a party to a free trade agreement, is a document issued by a certification body that:

- (a) identifies the goods to which it relates; and
- (b) certifies that those goods originate in the Republic.

(3) Goods originate in the Republic if, for the purposes of the relevant free trade agreement, the goods satisfy the requirements of the rules of origin prescribed for that agreement.

77. Bodies authorised to issue the Republic's certificates of origin

(1) The Chief Collector may designate a body as a certification body if the Chief Collector is satisfied that the body meets the prescribed criteria (if any).

(2) A designation may be subject to:

- (a) any prescribed terms and conditions; and
- (b) any additional terms and conditions imposed by the Chief Collector.

78. Ministerial orders on the Republic's certificates of origin and certification bodies

The Minister may, acting on the advice of the Chief Collector, make orders for any of the following purposes:

- (a) prescribing forms for the purposes of sections 76 and 77; and
- (b) prescribing the manner in which applications for designation as a certification body must be made; and
- (c) prescribing criteria for certification bodies; and
- (d) prescribing terms and conditions subject to which designations as a certification body may be made; and
- (e) prescribing fees, subject to the prior approval of fees by the Cabinet.

79. Goods for export to be dealt on making of entry

(1) For goods that have been entered for export, the person making the entry or the owner of the goods must immediately export the goods to a point outside the Republic pursuant to the entry and this Act on the exportation of goods.

(2) If goods entered for export are not exported according to the entry, the person making the entry must immediately give notice to Customs of the failure to export and the reasons for it, in any such case, the Chief Collector—

- (a) must cancel or amend the entry; and
- (b) may, where applicable, allow the goods to be released from the control of Customs.

(3) Despite subsection (1), if the licence conditions of a Customs controlled area allow, an export entry may be made for goods removed from that area for sales made for delivery to persons on their arrival in the Republic from a point outside the Republic.

80. Goods for export not to be landed

Goods loaded for export may not, without the permission of a Customs officer, be landed except at a point outside the Republic.

81. Time of exportation – For the purposes of this Act, the time of exportation is the time when the exporting craft leaves the last Customs place at which that craft calls immediately before proceeding to a point outside the Republic.

Division 4 – Customs seals

82. Customs seal may be applied to goods for export

(1) The Chief Collector may, by notice in writing specifying the date on and after which the appointment takes effect, appoint a Customs officer to apply Customs seals to packages of goods to be exported.

(2) The notice must:

- (a) specify the circumstances in which the officer or other person may apply a Customs seal to a package of goods; and
- (b) prohibit the officer or other person from applying a Customs seal in any other circumstances.

(3) Without limiting subsection (2), the notice must specify that the officer or other person may apply a Customs seal to a package of goods to which no Customs seal has earlier been applied only if:

- (a) the exporter concerned (or his or her agent or employee) consents to the seal being applied; or
- (b) the seal is applied incidental to, and immediately after, the exercise by any person of a power under this Act to examine or search for goods of any kind.

(4) The notice must:

- (a) also specify the circumstances in which Customs officer or other person may alter, remove, damage, dispose of, or otherwise interfere with a Customs seal applied to a package of goods; and
- (b) prohibit the officer or other person from interfering in any way with a Customs seal of that kind in any other circumstances.

(5) A notice of appointment under this section may be amended or revoked by the Chief Collector by a further notice in writing given to Customs officer or other person concerned and specifying the date on or after which the amendment or revocation takes effect.

83. Warning notices for packages to which seal applied

A notice of appointment under section 82 must also require Customs officer or other person concerned, on applying a Customs seal to a package of goods that are not goods to be exported under a Customs-approved secure export scheme, to ensure that there is attached to the package a warning notice that explains in terms approved by the Chief Collector:

- (a) that the goods in the package are, from the time when a Customs seal is first applied to the package until the exportation of the goods to a point outside the Republic, goods subject to the control of Customs;
- (b) that the powers to search and detain under section 159 are available in respect of a vehicle in the Republic if there are suspected to be in or on the vehicle goods that are, or suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a package to which a Customs seal has been applied;

- (c) that a Customs officer may, under section 162(2), question 1 or more of the following persons about any cargo destined to be exported from the Republic—
 - (i) the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on the vehicle or has within the previous 72 hours had in or on the vehicle, goods subject to the control of Customs and in a package to which a Customs seal has been applied;
 - (ii) the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on the premises, or have within the previous 72 hours had in or on the premises, goods subject to the control of Customs and in a package to which a Customs seal has been applied;
 - (iii) an employee of a person described in subparagraph (i) or (ii);
- (d) that the powers in section 175 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a package to which a Customs seal has been applied.

Division 5 – Customs approved secure exports schemes

84. Chief Collector may approve secure exports scheme

- (1) In this section and sections 86 and 90, 'exporter' means a person involved in the carriage, handling, transportation, or exportation of goods for export.
- (2) The Chief Collector:
 - (a) may, on application by an exporter, approve a secure exports scheme to be a Customs approved secure exports scheme; and
 - (b) must ensure that the exporter concerned is notified promptly and in writing of any decision to give or to decline an approval under this section.
- (3) An approval under this section:
 - (a) must be in writing, subject to any conditions the Chief Collector specifies in the approval; and
 - (b) takes effect either on the day after the date on which it is given or on any later date specified in the approval; and
 - (c) may be revoked by the Chief Collector by notice in writing given to the exporter concerned and specifying any conditions of the revocation and the date on or after which the revocation takes effect.
- (4) Subsections (2) and (3) apply (with modifications) to any amendment to a secure exports scheme.
- (5) The Chief Collector must, on application by the exporter, revoke an approval of a secure exports scheme, subject to the condition that goods remain subject to the scheme until exported if, at the time the revocation takes effect, the goods have been secured in a Customs-approved secure package under the scheme but not yet exported.
- (6) An applicant who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

85. Purpose of secure exports scheme

The purpose of a secure exports scheme is to help to ensure that goods to be exported under the scheme are:

- (a) packaged securely and with no other goods; and
- (b) conveyed securely and without interference to the place of shipment and shipped.

86. Matters to be specified in secure exports scheme

- (1) A secure exports scheme must specify how the goods to be exported under the scheme are to be packed, including:
 - (a) the secure package to be used;
 - (b) the seal or markings to be applied to the package, as soon as it is secured—
 - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (ii) to help to identify tampering or interference with the package after it is secured.
- (2) A secure exports scheme must also specify any conditions required by the Chief Collector as to:
 - (a) the persons who are to pack the goods, and the security checks to be applied to those persons;
 - (b) the conditions in which packing is to occur (for example, the area or areas in which parking is to occur, and the controls on the entry and exit of persons and goods to that area or those areas);
 - (c) any other requirements relating to how the goods are to be packed.
- (3) A secure exports must also specify how, on the completion of the packing of the goods, the goods are to be conveyed to the place of shipment and shipped, including any conditions required by the Chief Collector as to:
 - (a) the persons who are to convey the goods, and the security checks to be applied to those persons;
 - (b) the manner in which the goods to be conveyed;
 - (c) any place or places of security en route to the place of shipment in which the goods are to be stored in the course of being conveyed to the place of shipment and shipped.

87. Matters to be acknowledged in secure exports scheme

- A secure exports scheme must include express acknowledgement by the exporter concerned:
- (a) that the goods to be exported under the scheme are, from the time when they are first secured in a Customs-approved secure package until the exportation of the goods to a point outside the Republic, goods subject to the control of Customs;
 - (b) that the powers to search and detain under section 159 are available in respect of vehicle in the Republic if there are suspected to be in or on the vehicle goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package;
 - (c) that a Customs officer may, under section 162(2), question 1 or more of the following persons about any cargo destined to be expected from the Republic—
 - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, has within the

- previous 72 hours had in or on it, goods subject to the control of Customs and in a Customs-approved secure package;
- (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, goods subject to the control of Customs and in a Customs-approved secure package;
 - (iii) a person employed by a person described in subparagraph (i) or (ii);
- (d) that the powers in section 175 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
- (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package.

88. Goods to be exported under Customs approved secure exports scheme may be exported under drawback

(1) Goods to be exported under a Customs-approved secure exports scheme may be exported under drawback.

(2) If goods to be exported under a Customs-approved secure exports scheme are exported under drawback, then any prescribed conditions for allowing drawback of duty must be satisfied, even though satisfying those conditions may involve conveying or handling or storing the goods in a way not specified in the scheme.

89. Use of Customs seals in relation to goods to be exported under Customs-approved secure exports schemes

(1) This Act does not prevent a Customs seal from being used on a Customs-approved secure package after an approved seal or markings of the kind referred to in section 86(1)(b) have been applied to the package under the relevant Customs-approved secure exports scheme.

(2) Goods to be exported under a Customs-approved secure exports scheme are not to be regarded as no longer to be exported under the scheme just because 1 or more Customs seals have been applied to Customs-approved secure package concerned.

90. Exporters may be involved in exportation of goods outside Customs approved secure exports scheme

(1) This section applies to an exporter involved in the carriage, handling, transportation or exportation of goods for export under 1 or more Customs-approved secure exports scheme.

(2) This Act does not prevent the exporter from being involved in the carrying, handling, transportation or exportation of goods for export otherwise than under that scheme or those schemes.

PART 7 - PROHIBITED IMPORTS AND PROHIBITED EXPORTS

91. Prohibited imports – (1) A person must not import into the Republic:

- (a) any of the goods specified in Schedule 1; or
- (b) all publications that are objectionable within the meaning of this Act in the hands of all persons and for all purposes; and all other indecent or obscene articles;

- (c) goods or electronic publications the importation of which is prohibited by a order made under subsection (3) or any other written law of the Republic where the importation of such goods is prohibited.
- (2) Electronic publications the importation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act.
- (3) If it is necessary in the public interest, the Minister acting on the advice of the Chief Collector may, by order, prohibit the importation into the Republic of:
 - (a) any specified goods or electronic publications; or
 - (b) goods or electronic publications of a specified class or classes.
- (4) A prohibition imposed under this section:
 - (a) may be general; or
 - (b) may be limited to the importation of goods or electronic publications from a specified place or by or from a specified person or class of persons; or
 - (c) may, whether general or limited, be absolute or conditional.
- (5) A conditional prohibition may allow the importation of goods or electronic publications:
 - (a) under the authority of a licence or a permit (whether granted before or after the importation of the goods), or a consent, to be granted by the Chief Collector or by any other person named in the order, on or subject to any terms or conditions not inconsistent with the provisions of the prohibition, as may be imposed by the Chief Collector or other person granting the licence, permit, or consent; or
 - (b) on or subject to any other prescribed conditions.
- (6) No goods otherwise dutiable are exempt from duty because their importation is unlawful.

92. Prohibited exports

- (1) A person must not export from the Republic:
 - (a) any publication that is objectionable in the hands of a person and for any purpose; and
 - (b) goods or electronic publications the exportation of which is prohibited by an order made under subsection (3) or any other enactment where the exportation of the goods is prohibited.
- (2) Electronic publications (the exportation of which is prohibited by subsection (1)) must be treated as if they were goods for the purposes of this Act
- (3) If the prohibition is necessary in the public interest, the Minister, acting on the advice of the Chief Collector, may by order prohibit the exportation from the Republic of:
 - (a) any specified goods or electronic publications; or
 - (b) goods or electronic publications of a specified class or classes.
- (4) A prohibition under this section:
 - (a) may be general; or
 - (b) may be limited to the export of goods or electronic publications to a specified place or by or to a specified person or class of persons; or
 - (c) may, whether general or limited, be absolute or conditional.
- (5) A conditional prohibition may allow the exportation of goods or electronic publications:
 - (a) under the authority of a licence, permit or consent, to be granted by the Chief Collector or by any other person named in the order, on or subject to any

terms or conditions not inconsistent with the provisions of the prohibition, as may be imposed by the Chief Collector or other person granting the licence, permit or consent; or

(b) on or subject to any other prescribed conditions.

(6) A prohibition under this section does not apply to goods that are already loaded into the exporting craft at the time when the prohibition comes into force.

(7) Unless otherwise prescribed by an order under this section, an order under this section prohibiting the exportation of goods extends to and applies to the shipment of the goods for use as stores by a craft.

93. Production of licence or permit for goods

If, under this Act, or any other enactment, the importation or exportation of goods, or of goods of any class or kind, is prohibited except under the authority of a licence or permit under an enactment, the Chief Collector may refuse to pass an entry for those goods, or for goods of that class or kind until he or she is satisfied that a licence or permit has been issued.

PART 8 - DUTIES

Division 1 – Valuation of goods

94. Importer to specify Customs value on entry

(1) A person who makes entry of goods imported or to be imported must, on making entry, specify the Customs value of the goods, determined under Schedule 2.

(2) An importer or agent of an importer who makes an assessment under subsection (1) must:

(a) keep the documents, records, and information in respect of that entry in a manner and for a period, as is required by section 111 and any regulations made for the purposes of that section; and

(b) when required by Customs, produce those documents, records, and information for the purpose of establishing the accuracy of the assessment.

95. Amendment of valuation assessment

(1) If the Chief Collector is satisfied, whether as the result of an investigation carried out under section 179, or as the result of an audit or examination carried out under section 183, or for any other reason, that an assessment made under section 94(1) in respect of goods is—

(a) inconsistent with Schedule 2; or

(b) for any other reason, incorrect,—

the Chief Collector may amend that assessment, and that amended assessment is the Customs value for the purposes of this Act.

(2) Notice in writing must be given to the importer of—

(a) an amended assessment made under subsection (1); and

(b) the basis for the amended assessment, and where applicable, the relevant clauses of Schedule 2 relied upon for the valuation of goods for the purposes of the Customs Tariff Act 2014 that are relevant to the amended assessment.

(3) Subsection (1) applies whether or not:

(a) the goods have been released from the control of Customs; or

(b) any duty assessed has been paid.

(4) An importer who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against the decision.

96. Currency and exchange rate

(1) Customs value must be determined or declared in Australian Dollars.

(2) If an amount that is required under this Act to be taken into account for the purpose of assessing duty or for any other purpose is not an amount in Australian Dollars, the amount to be so taken into account is the equivalent amount in Australian Dollars in accordance with a fair rate of exchange set regularly and determined by the Chief Collector.

(3) The regular determinations of the fair rates of exchange of foreign currency made by the Chief Collector must be publicly notified.

(4) If an amount is required to be converted into Australian Dollars under subsection (2), the amount must be converted:

(a) for goods of which an entry has been made, at the rate applying as at the date of the making of the first entry (not being an entry for removal) for those goods:

(b) for other goods (at the rate applying as at the date of the first assessment of Customs duty on those goods).

97. The Republic's right of compulsory acquisition

(1) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duty, goods for which entry is made may, at any time while they remain subject to the control of Customs, be acquired by the Republic.

(2) The right of taking goods under subsection (1) may be exercised by the Chief Collector, and the acquisition of the goods is effected as soon as a warrant, in the prescribed form for their acquisition, is signed by the Chief Collector.

(3) Goods become the property of the Republic under this section on the signing of the warrant.

(4) Notice in writing that the Chief Collector has signed a warrant under this section is to be given to the importer immediately after the signing of the warrant.

(5) Goods acquired by the Republic under this section must, if no appeal is made under subsection (8), be sold by the Chief Collector or by his or her agent and the proceeds of sale must be accounted for as Customs revenue.

(6) The price payable by the Republic for the goods acquired under this section must be:

(a) equal to their declared Customs value with the addition of—

(i) any charges for freight, insurance and other matters incidental to their importation as the Chief Collector thinks reasonable; and

(ii) any duties already paid on the goods; and

(b) paid to the importer without further appropriation than this section within 20 working days of the acquisition of the goods.

(7) This section does not limit or affect any other powers of Customs on the goods or any liability of the importer or any other person for an offence committed in respect of the goods.

(8) An importer who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

Division 2 – Origin and preferential tariff provisions

98. Origin of fish or other produce of the sea

(1) For fish or other produce of the sea, or goods produced or manufactured wholly or partly from fish or produce at sea, anything done by or on board a ship belonging to a country (other than the Republic) is treated, for the purposes of this Act and any enactment to have been done in that country, and the produce of the sea or goods so produced or manufactured at sea, if brought direct to the Republic, are treated to be imported into the Republic from that country.

(2) The Chief Collector must determine any question that may arise as to the country to which any ship belongs for the purposes of subsection (1); and the determination of the Chief Collector is final.

99. Ministerial orders for determining country of produce or manufacture

The Minister acting on the advice of the Chief Collector, may, make regulations:

- (a) prescribe the goods or any type or class of goods that are treated to be the produce or manufacture of any company or any group of countries—
 - (i) for the purposes of this Act; or
 - (ii) for the purposes of the Customs Tariff Act 2014; and
- (b) prescribe the conditions to be fulfilled before goods are treated to be the produce or manufacture of any country or any group of countries; and
- (c) authorise the Chief Collector to determine (in relation to specific goods)—
 - (i) that the percentage of the goods' factory or works cost is to be increased or decreased;
 - (ii) the valuation or method of valuation (including a reduced or zero valuation) if any material, labour, or overhead used in the goods production has been supplied free of charge or at a reduced cost;
 - (iii) the required percentage of qualified area content in case of unforeseen circumstances that are unlikely to continue;
 - (iv) variations or conditions relating to the goods entering the commerce of another country.

100. Conditions precedent to entry of goods at preferential rates of duty

(1) If it is claimed that any goods are entitled under this Act or any other enactment or authority to be entered free of duty or at any rate of duty lower than the rate in the Tariff for the goods, the Chief Collector may require the claim to be verified at the time of entry or a subsequent time (including any time after the goods have ceased to be subject to the control of Customs).

(2) If the Chief Collector requires the claim to be verified at the time of entry of the goods and the claim is not verified to the satisfaction of the Chief Collector at that time, the goods for which the claim has been made must not be so entered.

101. Unsubstantiated preference claims

(1) If the Chief Collector is satisfied:

- (a) whether as the result of an investigation carried out under section 179; or
- (b) whether as the result of an audit, or examination carried out under section 183;
or
- (c) for any other reason,—

that the country of which goods are the produce or manufacture cannot be ascertained because no evidence can be found, the goods are treated, for the purposes of this Act or any other enactment or authority to be the produce or manufacture of a country subject to the rates of duty set out in the Tariff.

(2) An importer must be advised by notice in writing of a decision of the Chief Collector under this section.

(3) An importer who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

(4) This section applies whether or not the goods have been released from the control of Customs.

PART 9 - ASSESSMENT, REFUNDS AND DRAWBACKS OF DUTY

Division 1 – Assessment and Recovery

102. Duty on imported goods a debt to the Republic

(1) The duty on all goods imported constitutes, immediately on importation of the goods, a debt due to the Republic.

(2) The duty is owed by the importer of goods, and, if more than one (whether at or at any time after the time of importation) then jointly and severally by all of them.

(3) Subject to this Act, the debt becomes due and payable when:

(a) goods have been entered under section 60 and the entry has been passed for home consumption; or

(b) goods have been entered under section 60 for removal to a manufacturing area; or

(c) goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered under section 60; or

(d) an offence has been committed against this Act in respect of the goods.

(4) The debt is recoverable by action at the suit of the Chief Collector on behalf of the Republic.

(5) The right to recover duty as a debt due to the Republic is not affected by the fact that:

(a) the goods have ceased to be subject to the control of Customs; or

(b) a bond or other security has been given for the payment of duty; or

(c) no proper assessment of duty has been made under this Act or that a deficient assessment of duty has been made.

(6) The Chief Collector may:

(a) subject to any terms and conditions, approve any person or class of persons as persons who may defer the payment of duty due under this section; and

(b) for the purpose of paragraph (a), determine a duty accounting period; and

(c) may amend, suspend or withdraw the approval; or

(d) vary, suspend or withdraw any term or condition under which the approval is given or impose new term or condition; or

(e) vary the duty accounting period.

(7) The Chief Collector must, in writing, advise a person or class of persons affected by a decision under subsection (6).

(8) All goods specified in the inward report of any craft are presumed to have been actually imported unless the contrary is proved.

(9) A person who is dissatisfied with a decision of the Chief Collector under subsection (6) may, within 20 working days after the date on which notice of the decision is given, appeal to Minister against that decision.

103. Power of Minister to suspend, remit, refund or create exemptions from duty, etc.

(1) The Minister acting on the advice of the Chief Collector, may by order suspend, order the remission or refund of, or create exemptions from, duty in respect of goods or classes of goods manufactured in the Republic or imported into the Republic that are:

- (a) supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may be established or temporarily based in the Republic under an agreement or arrangement entered into by or on behalf of the Government of the Republic with the Government of any other country or with the United Nations; or
- (b) supplied solely for the use of persons temporarily resident in the Republic for the purpose of serving as a member of any such approved organisation, expedition, or other body.

(2) The Chief Collector may impose any conditions on goods or a class of goods to which an order is made under this section.

104. Additional duty imposed

(1) If a duty, the payment of which has been deferred under section 102(6), remains unpaid by the due date for payment, additional duty must be imposed as follows:

- (a) additional duty of 10% of the amount of duty unpaid by the due date; and
- (b) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of the period of 30 days after the due date; and
- (c) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of each succeeding period of 30 days.

(2) Despite subsection (1), the Chief Collector may remit or refund the whole or any part of any additional duty imposed by that subsection.

(3) If, for any reason, the amount of duty for which additional duty has been imposed under subsection (1) is amended, the additional duty must, if necessary, be adjusted accordingly.

(4) A person who fails to pay duty or additional duty under subsection (1) on the due date may be suspended from a deferred duty payment scheme by the Chief Collector.

(5) A person liable for the payment of the duty who is dissatisfied with a decision of the Chief Collector under subsection (3) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

105. Assessment of duty

(1) An entry for goods made under this Act is taken to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.

(2) If the Chief Collector has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry on the goods, the Chief Collector may assess the duty at an amount as the Chief Collector considers proper.

(3) The person liable for the payment of the duty must be advised of the assessment by notice in writing.

(4) A person liable for the payment of the duty who is dissatisfied with a decision of the Chief Collector under subsection (2) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

106. Amendment of assessment

(1) Subject to section 110, the Chief Collector may amend an assessment of duty in order to ensure the correctness of the assessment even though:

- (a) the goods to which the duty relates are no longer subject to the control of Customs; or
- (b) the duty originally assessed has been paid.

(2) If the amendment has the effect of imposing a fresh liability or alternating an existing liability, notice in writing must be given by the Chief Collector to the person liable for the duty.

(3) A person liable for the payment of the duty who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

107. Due date for payment of duty

(1) Unless otherwise specified in this Act, the due date for the payment of duty:

- (a) assessed under section 105(2); or
- (b) reassessed under section 106; or
- (c) demanded under section 118 or 119,—

is the date that is 30 days after the date on which written notice of the assessment, amended assessment or demand is given by the Chief Collector.

(2) However, if the Chief Collector has reasonable cause to believe that a person will be unable to pay the duty by the due date under subsection (1), the Chief Collector may, by notice in writing, require that person to pay the duty by an earlier date.

(3) A notice issued under subsection (2) is a demand for payment, and the duty becomes due and payable on the date fixed by the Chief Collector.

(4) A person liable for the payment of the duty who is dissatisfied with the decision of the Chief Collector under subsection (2) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

(5) If all or part of a duty remains unpaid by the due date, the amount outstanding is treated to have been increased by an amount calculated under section 104(1).

108. Assessment presumed to be correct

(1) An assessment made by the Chief Collector under this Act, including an amended assessment, is presumed to be correct and duty is payable accordingly unless on an appeal a different amount is determined to be the duty payable on the goods or it is determined that no duty is payable.

(2) Despite anything in this Act, where an appeal has been lodged under Part 8, 9, 10, or 12, the Chief Collector may, subject to receiving any security as he or she thinks sufficient to cover the full amount of duty, release the goods from the control of Customs.

109. Obligation to pay duty not suspended by appeal

(1) Subject to subsection (3), the obligation to pay and the right to receive and recover duty under this Act are not suspended by any appeal or legal proceedings.

(2) Subject to subsection (3), if the appellant is successful in the appeal or the proceedings:

(a) any amount of the duty or any security received by the Chief Collector in excess of the amount that, under the decision on the appeal or the proceedings, was properly payable must immediately be refunded to the appellant by the Chief Collector; or

(b) the appellant must be released from the conditions of the security imposed under section 180.

(3) An obligation on the Chief Collector under subsection (2) is suspended pending the outcome of any appeal filed by the Chief Collector under this Act or any other enactment against the decision requiring the duty to be refunded.

110. Limitation of time for amendment of assessment

(1) If an assessment of duty has been made under this Act, the Chief Collector must not amend the assessment so as to increase the amount of the assessment after the expiration of 5 years from the date on which the original assessment was made.

(2) Despite subsection (1), if, in the opinion of the Chief Collector, the entry or any declaration made for the goods was fraudulent or wilfully misleading, the Chief Collector may amend the assessment at any time so as to increase the amount of the assessment.

111. Keeping business records

(1) A licensee, importer, exporter or certification body authorised by the Chief Collector under section 77 ('person') must keep or cause to be kept in the Republic any records, for a prescribed period of time not exceeding 5 years.

(2) The person must, as and when required by a Customs officer:

(a) make the records available to Customs; and

(b) provide copies of the records as required; and

(c) answer any questions relevant to matters arising under this Act asked by any officer in respect of them.

(3) If, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the person or person's agent must, at the request of a Customs officer, operate the device, or cause it to be operated, to make the information available to the Customs officer.

112. Giving Customs access to business records

(1) This section applies to a person only if the person:

(a) is a person to whom section 111(1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, the Republic, including a person involved in the transportation of goods to a Customs place from which goods for export will proceed to a point outside the Republic; and

(b) has been required by the Chief Collector by notice in writing to comply with this section on and after a date specified in the notice in writing.

(2) On and after the date specified in the notice in writing, a person to whom this section applies must:

- (a) if the person is a person to whom section 111(1) applies, give Customs access to the records the person is required to keep under section 111; and
 - (b) if the person is a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, the Republic, give Customs access to any records the person may currently keep of the kind required to be kept under section 111.
- (3) A person to whom this section applies must:
- (a) give Customs that access in the prescribed form and manner, including in an electronic form and manner; and
 - (b) ensure that Customs has that access at all reasonable times.
- (4) The Chief Collector may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.
- (5) This section does not affect an obligation under section 111 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of, records.

113. Meaning of 'related'

In section 114, one person (A) is 'related' to another person (B):

- (a) if A is connected to B by blood relationship, marriage, or adoption, or if A is a trustee of a trust in which B is a beneficiary, and for the purposes of this paragraph—
 - (i) persons are connected by blood relationship if within the fourth degree of relationship traced through a common ancestor;
 - (ii) persons are connected by marriage, civil union, or de-facto relationship if they are married to, in a civil union with, or in a de-facto relationship with each other ('partners'), and includes a relationship between one partner and a person connected by blood relationship with the other partner;
 - (iii) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other;
- (b) if B is a company, where A is a director or officer of B, or is related (within the meaning of paragraph (a)) to a director or officer of B, or is directly or indirectly able to extend control over the affairs of B;
- (c) if A is a company, where the B is a director or officer of A, or is related (within the meaning of paragraph (a)) to a director or officer of A, or is directly or indirectly able to exercise control over the affairs of A;
- (d) if the both A and B are companies—
 - (i) where one company is a holding company or is a subsidiary company of the other company, as the case may be; or
 - (ii) where either company owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the company; or
 - (iii) where both companies have the same holding company, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

114. Duty a charge on goods

(1) Subject to subsection (3), the duty on any goods constitutes a charge on those goods, in priority over any other charges until fully paid.

(2) Subject to the provisions of this section, if any duty charged on any goods under this section is due and unpaid, the Chief Collector may, whether or not the property in the goods has passed to a third party, take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.

(3) Subsection (1) does not apply as against a purchaser of the goods for valuable consideration and without knowledge that the duty was owing but had not been paid.

(4) If a person claims, or before the taking of possession of the goods by the Chief Collector, that the person is a purchaser to whom subsection (3) applies and there is a dispute as to whether that subsection applies the Chief Collector may:

(a) if the goods are in the possession or control of the importer, take possession of the goods and subject to subsection (6), retain possession of them; or

(b) if the goods are in the possession or control of the purchaser, by notice in writing, direct the purchaser, subject to subsection (6), to retain the possession or control of the goods,—

pending the resolution of the dispute, and subsections (6) to (8) apply.

(5) If:

(a) possession of the goods have been taken by the Chief Collector but the goods have not been sold; and

(b) a person notifies the Chief Collector that he or she claims that he or she is a purchaser to whom subsection (3) applies; and

(c) there is a dispute as to whether that subsection applies,—

the Chief Collector must, subject to subsection (6), retain possession of the goods pending the resolution of the dispute, and subsections (6) to (8) apply.

(6) If any goods that the Chief Collector has taken possession of or has directed a purchaser to retain under this section consist wholly or partly of any living creature or anything which, in the opinion of the Chief Collector, is of a perishable nature or which may otherwise lose its value if not sold as soon as possible, the Chief Collector may, or the purchaser in possession or control of the goods may with the prior consent of the Chief Collector, sell the goods, and the net proceeds of sale are taken to be substituted for the thing so sold.

(7) The Chief Collector or the purchaser of the goods may apply to the court for a declaration as to whether the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing and unpaid.

(8) In any proceedings under subsection (7), if the purchaser and a person liable to pay the duty are related, the onus of proving that the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing but unpaid is on the purchaser.

(9) In this section, 'purchaser' means:

(a) a person (other than a person liable to pay the duty) who acquired the goods; or

(b) a subsequent purchaser of the goods,—

who in either case is not related to the person liable to pay the duty.

115. Application of section 116

Section 116 applies to the recovery of unpaid duty:

(a) that is owing by—

- (i) an individual who is bankrupt or insolvent; or
 - (ii) a company that is in liquidation; or
 - (iii) a company that is in receiver; or
 - (iv) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or
 - (v) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed; or
 - (vi) a company that is in voluntary winding-up; or
 - (vii) a company that is insolvent; or
 - (viii) a trust that is insolvent; and
- (b) that does not constitute a charge on goods.

116. Ranking of duty

(1) Unpaid duty to which this section applies must be paid under the following provisions of this section.

(2) For an individual, upon the person's bankruptcy or upon the person making an assignment for the benefit of the person's creditors, the amount of any duty to which this section applies must rank, in order of priority, immediately after the preferential claims for wages or other sums payable to any worker, and in priority to all other claims.

(3) For a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over the property of the company or upon possession being taken on behalf of that debenture holder of the property, the amount of any duty to which this section applies must rank immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims.

(4) For a body of persons other than a company, upon the appointment of a receiver on behalf of any person under any order by a court, enactment or agreement, the amount of any duty to which this section applies will rank, in order of priority, immediately after any preferential claims for wages or other sums payable to any worker, and in priority to any claims of holders of debentures under any floating charge, including a floating charge (which has since creation become a fixed or specific charge) created by the body and will be paid accordingly out of any priority comprised in or subject to that charge.

(5) This section applies despite anything in any other enactment.

(6) This section or section 114 is not affected by section 117.

117. Release of goods subject to duty

(1) Except as otherwise provided in this Act, or in any cases as may be approved by the Chief Collector, and subject to any securities as the Chief Collector may require, a person is not entitled to obtain release of goods from the control of Customs until the sum payable by way of duty on the goods is paid in full.

(2) An action or other proceeding may not be instituted against the Republic or the Chief Collector or any Customs officer for the detention of goods during a period before the payment of the full sum so payable.

(3) If the Chief Collector considers that undue hardship would result from the payment of duty as required by this section, the Chief Collector may, subject to conditions as he or she may think fit to impose, direct the release of the goods from the control of Customs and accept payment of duty by instalment over a specified period.

118. Liability for duty on goods wrongfully removed or missing

(1) The CCA licensee is liable for duty payable on goods that the Chief Collector is satisfied have been wrongfully removed from or are missing from that Customs controlled area as if the goods had been imported or manufactured by the licensee and entered under section 60.

(2) The CCA licensee is not released from liability under this section under any other provision of this Act or any other enactment.

(3) If:

(a) dutiable goods are removed from a Customs controlled area without the authority of Customs; or

(b) dutiable goods are not produced by the licensee to Customs and are not accounted for as having been lawfully delivered from Customs controlled area,—

duty becomes due and payable as if the goods were removed for home consumption, or entry has been made and passed for home consumption.

(4) The Chief Collector may, by notice in writing, demand from the owner or importer of the goods or the licensee of a Customs controlled area payment of any sum that the Chief Collector has reasonable cause to suspect is owing under this section.

(5) Duty payable under this section constitutes a debt due to the Republic by the CCA licensee and the importer of the goods and the owner of the goods whose liability is joint and several.

(6) A person liable for the payment of the duty who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

119. Liability of owners of craft for duty on goods unlawfully landed

(1) If cargo or stores or other goods are unlawfully landed in the Republic in or from a craft that is within the Republic, the owner and the person-in-charge of the craft (without prejudice to the liability of any other person) are jointly and severally liable for the payment of the duty on the cargo stores or other goods, as if that cargo or those stores or other goods had been imported by them and entry had been made and passed for home consumption under section 60.

(2) The Chief Collector may, by notice in writing, demand from the owner or the person-in-charge of a craft payment of a sum that the Chief Collector has reasonable cause to suspect, is owing under this section.

(3) In any proceedings for the recovery or refund of duty under subsection (1), the sum so demanded by the Chief Collector is presumed to be due and payable unless the contrary is proved.

(4) A person liable for the payment of the duty who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

120. Effect of payment of duty by one person on liability of other persons

The liability of a person under a provision of this Act for the payment of duty on goods is extinguished by the payment of that duty by any other person liable for the payment of it under any provision of this Act unless that duty is subsequently refunded or remitted.

121. Incidence of altered duties

(1) For an amendment to an enactment on liability of goods to duty or the rate of duty to which goods are liable, the liability or rate is, unless otherwise expressly provided, to be determined:

- (a) for goods held in a CCA licensed area for the purposes of section 11(b), or produced in a manufacturing area, by the enactment in force at the time the goods are removed from the export warehouse or manufacturing area;
- (b) for other goods, by the enactment in force at the time the goods are imported into the Republic.

(2) In this section, 'amendment to an enactment' includes amendment that takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

122. Assessment of duty in particular cases

(1) Duties imposed according to a specified quantity, weight, size, or value must be charged proportionately on a greater or smaller quantity, weight, size, or value.

(2) For the purposes of assessing duty on alcoholic beverages, if duty is to be calculated relative to the alcohol content of the beverage:

- (a) the means of ascertaining the volume of alcohol present in an alcoholic beverage is to be determined by the Chief Collector in consultation with a qualified analyst; and
- (b) if, on entry under section 60, it is ascertained that the volume of alcohol has increased or diminished by natural process of change while subject to the control of Customs, duty is payable in accordance with the volume of alcohol as so increased or diminished.

123. Re-importation of goods exported

(1) Subject to subsection (2), goods exported from the Republic may, in such cases and under any conditions as may from time to time be approved by the Chief Collector, be admitted free of duty, or at any rate of duty determined by the Chief Collector, not exceeding the duty that would be payable on the goods if imported for the first time.

(2) This section applies to goods which, when reimported, are in substantially the same condition as when exported.

(3) Despite subsection (1), where drawback of duty has been claimed or duty remitted on export, duty will be payable on re-importation.

124. Payment of duty by importer, exporter or licensee leaving the Republic

(1) Upon the application of an importer, exporter or licensee ('the person') under this Act about to leave the Republic, if the Chief Collector is satisfied—

- (a) that the person is not liable to pay any duty; or
- (b) that all duty payable by the person has been paid; or
- (c) that satisfactory arrangements have been or will be made for the payment of all duty that is or may be payable by the person,—

the Chief Collector may issue a certificate to the effect that the person is not under any liability for duty requiring to be discharged before the person leaves the Republic.

(2) The certificate issued under subsection (1) remains in force for a period or until a date specified in the certificate.

(3) If the person is about to leave the Republic, and:

- (a) that person is liable to pay any duty; or
- (b) all duty payable by that person has not been paid; or
- (c) satisfactory arrangements have not been made for the payment of all duty that is or may be payable by that person,—

the Chief Collector may issue a certificate to the effect that the person is under a liability for duty that is required to be discharged before the person leaves the Republic.

(4) The Chief Collector may serve the certificate issued under subsection (3) on an international airline operating flights to and from the Republic and that airline must not allow the person named in the certificate to be removed from the Republic on its aircraft until the airline is provided with a certificate from the Chief Collector issued under subsection (1).

(5) The Chief Collector must serve a certificate issued under subsection (3) on the person named in the certificate; and the person must take no further steps to leave the Republic by any means whatsoever until:

- (a) the Chief Collector has issued a certificate under subsection (1); or
- (b) a Judge permits it under section 34 of the Civil Procedure Act 1972.

(6) In addition to serving the certificate under subsection (4), the Chief Collector may apply for an absconding debtor's warrant under section 32 of the Civil Procedure Act 1972.

Division 2 – Refunds, remissions, and drawbacks of duty

125. Chief Collector may refund duty paid in error

(1) If the Chief Collector is satisfied that duty has been paid in error, either of law or of fact, the Chief Collector must, unless there is good reason not to, refund the duty:

- (a) at any time within 4 years after it has been paid; or
- (b) at any time, on an application made within 4 years after it has been paid.

(2) This section extends and applies to duties paid in error before the commencement of this section.

(3) If a calculation or a re-calculation of duty that apparently gives rise to an entitlement to a refund under subsection (1) is based on a manifest error in the legal instrument which establishes the duty payable, that is good reason under that subsection for the Chief Collector not to refund the duty.

(4) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

126. Refunds of duty on goods under tariff law

(1) If duty has been paid on imported goods and the Minister subsequently approves, under section 3 of the Customs Tariff Act 2014, a lower rate of duty or exempts the goods from duty, the Chief Collector must refund in whole or in part the duty paid so that the total duty paid on the goods is in accordance with the terms (including the effective date) of the approval.

(2) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

127. Other refunds and remissions of duty

(1) Subject to any prescribed exceptions, restrictions, or conditions, the Chief Collector may refund or remit any duty if the Chief Collector is satisfied that imported goods, or goods manufactured in the Republic:

- (a) have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition, prior to their release from the control of Customs; or
- (b) are of faulty manufacture; or
- (c) have been abandoned to the Republic for destruction or other form of disposal prior to their release from the control of Customs.

(2) Sample goods of any prescribed nature or prescribed value and samples of the bulk of goods subject to the control of Customs may, subject to any prescribed conditions, be delivered free of duty.

(3) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to Minister against that decision.

128. Power to apply refunds towards payment of other duties

If duty is or becomes refundable under this Act to a person, the Chief Collector may:

- (a) apply the whole or any part of the sum so refundable towards the payment of any other duty that is payable by that person; or
- (b) refund the whole sum to that person.

129. Recovery of duty refunded in error

Money refunded by Customs in error of fact or law is recoverable by action at the suit of the Chief Collector on behalf of the Republic at any time within 4 years after the date of its payment or any time if the refund has been obtained by fraud.

130. Goods temporarily imported

(1) Subject to this section, if the Chief Collector is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods must be secured, under section 180, in any cases approved by the Chief Collector, and on receipt of the security the Chief Collector may release the goods from the control of Customs without payment of duty.

(2) Subject to any prescribed conditions:

- (a) the person giving the security must be released from the conditions of the security; or
- (b) subject to subsection (3), a deposit of money made must be returned to the person by whom it was made,—

if, within 12 months from the date of their importation, the Chief Collector is satisfied that the goods have been—

- (aa) exported; or
- (bb) shipped for export; or
- (cc) packed for export into a bulk cargo container in a Customs controlled area and the container secured to the satisfaction of the Chief Collector; or
- (dd) not deliberately destroyed unless with the permission of the Chief Collector; or
- (ee) dealt with in such manner as the Chief Collector may allow.

(3) If goods are temporarily imported and used:

- (a) for industrial or commercial purposes; or

(a) any other purposes, as the Chief Collector may consider applicable,—
duty is payable on the amount by which their value for duty (as determined by the Chief Collector at the time that he or she is satisfied under subsection (2) that the goods have been dealt with under any of paragraphs (aa) to (ee) of that subsection) is less than their value for duty, as ascertained pursuant to this Act, at the time of their importation.

(4) If an amount of duty is payable under subsection (3), that duty may be deducted from any deposit of money given as a security under subsection (1).

(5) Despite subsection (3), but subject to any conditions imposed by the Minister, duty is not payable on goods temporarily imported under any treaty, agreement, or arrangement concluded by the Government.

(6) If, at the expiry of the 12-month period under subsection (2), the goods have not been dealt under that subsection:

(a) any sum secured by way of deposit of money must be retained by the Republic;
or

(b) any sum so secured must be paid to the Republic by the importer within 10 working days after the expiry of that period, and on the payment the security must be released.

131. Drawbacks of duty on certain goods

(1) Subject to subsections (2) to (7), drawbacks of duty may be allowed, at such amounts and subject to any prescribed conditions, on—

(a) goods imported into the Republic that are later exported from the Republic:

(b) goods that are produced in a manufacturing area and exported from the Republic:

(c) imported parts, and materials used in, worked into, or attached to, goods manufactured or produced in the Republic and exported from the Republic:

(d) imported materials, except fuel or plant equipment consumed in the manufacture or production of goods produced in the Republic and exported from the Republic.

(2) If the Chief Collector is satisfied that goods have been entered and shipped for export, the Chief Collector may, for the purposes of this section, refund drawback of duty.

(3) If drawback has been allowed on any goods consumed in the manufacture of those goods, the goods must not, without the permission of the Chief Collector, be un-shipped or re-landed or unpacked before export.

(4) If drawback has been allowed on goods consumed in manufacture of those goods and drawback has been paid on any goods that are un-shipped or re-landed or unpacked before export, the amount of drawback allowed for those goods or on goods consumed in the manufacture of those goods, immediately on their un-shipment or re-landing or unpacking, constitutes a debt due to the Republic; and the debt is immediately payable by the owner of the goods at the time of their un-shipment or re-landing or unpacking.

(5) The debt is recoverable by action at the suit of the Chief Collector on behalf of the Republic.

(6) The right to recover drawback as a debt due to the Republic under this section is not affected by the fact that a bond or other security has been given for the un-shipment or re-landing or unpacking of the goods before export.

(7) If, under this section, drawback is allowed to any person, the Chief Collector may, apply the whole or any part of the sum allowed towards the payment of any duty that is payable by that person.

132. Regulations on minimum duty, etc.

Regulations made under section 310 may prescribe:

- (a) an amount of duty below which that duty need not be collected, and the circumstances in which that duty need not be collected; and
- (b) the minimum amount of duty refundable on goods, and the circumstances in which duty below the prescribed amount must not be refunded; and
- (c) the minimum amount of drawback of duty allowable on goods, and the circumstances in which drawback below the prescribed amount will not be allowed.

PART 10 - CUSTOMS RULINGS

133. Application for Customs ruling – (1) A person may, in the prescribed form, apply (for particular goods specified in the application) to the Chief Collector for a Customs ruling on any one or more of the following matters:

- (a) the Tariff Classification of those goods under Part 1 of the Tariff;
- (b) whether or not those goods are, for the purposes of the Tariff and under any applicable regulations made under this Act, the produce or manufacture of a particular country or group of countries, referred to in the application;
- (c) whether or not those goods are subject to a specified duty concession under Part 2 of the Tariff.

(2) An application under subsection (1) may be made:

- (a) for imported goods—
 - (i) at any time before the date of importation into the Republic of the goods that are subject of the application; or
 - (ii) at any later time, if the Chief Collector permits; or
- (b) for goods manufactured in a manufacturing area—
 - (i) at any time before the date of manufacture of the goods; or
 - (ii) at any later time, if the Chief Collector permits.

(3) A person may, in the prescribed form, apply (for a particular matter specified in the application) to the Chief Collector for a Customs ruling as to the correct application of any provision contained in orders made under section 99.

(4) An application under subsection (1) or (3) must:

- (a) state the name and address of the applicant; and
- (b) for an application under subsection (1)—
 - (i) specify the particular goods that are the subject of the application; and
 - (ii) specify for those goods, the matter or matters listed under subsection (1) on which the applicant requests a Customs ruling and the applicant's opinion as to what Customs ruling should be; and
 - (iii) unless the Chief Collector agrees otherwise, be accompanied by the goods or a sample of the goods; and
- (c) contain, or have attached, all information that is relevant to a proper consideration of the application; and
- (d) be accompanied by the prescribed fee.

(5) The Chief Collector may request further information from an applicant if the Chief Collector considers that the information is relevant to the application.

134. Making of Customs ruling

- (1) Subject to subsection (4), the Chief Collector must:
 - (a) for an application made under section 133(1), make a Customs ruling on any particular goods specified in the application and on any matter on which the ruling is sought; or
 - (b) for an application made under section 133(3), make a Customs ruling on the particular matter specified in the application.
- (2) The Chief Collector must make a Customs ruling under subsection (1) within any prescribed time after receipt of:
 - (a) for an application under section 133(1)—
 - (i) a properly completed application in respect of particular goods; and
 - (ii) the goods or a sample of the goods unless the Chief Collector has agreed not to require receipt of the goods; and
 - (b) all information that the Chief Collector considers relevant to a proper consideration of the application; and
 - (c) all information that the Chief Collector requests under section 133(5); and
 - (d) payment of the prescribed fee.
- (3) A Customs ruling may be made subject to such conditions as the Chief Collector thinks fit.
- (4) The Chief Collector may decline to make a Customs ruling if, in the Chief Collector's opinion, he or she has insufficient information to do so.

135. Notice of Customs ruling

The Chief Collector must promptly give notice in writing to the applicant of:

- (a) a Customs ruling, together with the reasons for the ruling, and any conditions of the ruling; or
- (b) a decision to decline to make a Customs ruling, together with the reasons for that decision.

136. Effect of Customs ruling

- (1) A Customs ruling on particular goods is conclusive evidence for the purposes of this Act that the goods:
 - (a) have a particular tariff classification under Part 1 of the Tariff; or
 - (b) are or are not in accordance with applicable regulations or orders made under this Act, the produce or manufacture of a particular country, a group of countries, for the purposes of the Customs Tariff Act 2014; or
 - (c) are or are not subject to a specified duty concession under Part 2 of the Tariff.
- (2) Subject to section 139, a Customs ruling on a particular matter for which a ruling has been given under section 134(1)(b) is conclusive evidence for the purposes of this Act and, if applicable, the Customs Tariff Act 2014, of the application of the regulation or regulations on which the ruling was made in relation to that matter.

137. Confirmation of basis of Customs ruling

At any time after a Customs ruling is made, the Chief Collector may by notice in writing, require the applicant to satisfy the Chief Collector in a manner and within 20 working days or a longer period, as the Chief Collector considers appropriate:

- (a) that the facts or information on which Customs ruling was made remain correct; and

- (b) that any conditions of the ruling have been complied with.

138. Amendment of Customs ruling

(1) The Chief Collector may amend a Customs ruling to correct any error contained in the ruling.

(2) The Chief Collector must, promptly after making the amendment, give notice in writing to the applicant of the amended Customs ruling and, subject to subsection (3), the ruling as amended applies to the applicant as from the date on which notice of the amendment was given to the applicant.

(3) Despite subsection (2), if the amendment to the ruling has the effect of increasing any duty liability on goods:

- (a) imported within 3 months of the date notice of the amendment is given, under a binding contract entered into before that date of notice of the amendment; or
- (b) that have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to the Republic at the date the notice of the amendment of the ruling is given; or
- (c) imported on or before the date notice of the amendment is given but have not been entered for home consumption,—

the ruling given prior to the amendment under this section applies to those goods.

(4) Despite subsection (2), if the amendment to the ruling has the effect of decreasing any duty liability on any goods, section 125 applies as if the higher duty had been paid in error.

139. Cessation of Customs ruling

(1) A Customs ruling ceases to have effect on the earliest to occur of the following dates:

- (a) the date on which any information on which Customs ruling was made ceases to be correct in all material respects; or
- (b) the date of a material change in any of the information or facts on which Customs ruling was made; or
- (c) the date of a material change in the Customs Tariff Act 2014 or to any applicable regulations or orders made under this Act or the Customs Tariff Act 2014, if that date occurs prior to importation or manufacture of the relevant goods, as the case may be; or
- (d) the date on which any of the conditions to which the Customs ruling was made subject, ceases to be met or complied with; or
- (e) the date of a failure to satisfy the requirements of the Chief Collector under section 137; or
- (f) the date of expiry of 3 years from the date that notice of the Customs ruling, or any amendment to that Customs ruling under section 138, is given to the applicant.

(2) A Customs ruling does not come into effect if:

- (a) information on which it was made was not correct in all material respects; or
- (b) a material change has occurred in any information or facts on which it was made.

140. Appeal from decision of Chief Collector

An applicant who is dissatisfied with a Customs ruling, or a decision to decline to make a Customs ruling, or a decision to amend a Customs ruling, under this Part of this Act may, within 20 working days after the date on which notice of the ruling or decision is given, appeal to the Minister against that ruling or decision.

141. No liability where Customs ruling relied on

(1) If an applicant has relied on a Customs ruling on specific goods or a specific matter, and, as a result:

- (a) the applicant has not paid the amount of duty that, but for this section, is payable on the goods; or
- (b) the applicant would, but for this section, be liable to the imposition of a penalty under section 142 ; or
- (c) goods, but for this section, would be liable to seizure under this Act—

the amount of the duty otherwise payable is not recoverable as a debt due to the State and a penalty is not to be imposed under section 142 and the goods are not liable to seizure under this Act.

(2) Subsection (1) applies only to a matter:

- (a) on which Customs ruling was given and has not ceased under section 139; and
- (b) pursuant to any amendment to a Customs ruling that the applicant has received notice of under section 138.

PART 11 - ADMINISTRATIVE PENALTIES

142. Imposition of penalty

(1) In this Part, 'entry' means an entry required under this Act, including, without limitation:

- (a) a declaration, invoice, certificate, written statement, or other document required or authorised by or under this Act to be made or produced by a person making the entry; and
- (b) an amendment of the entry; and
- (c) for goods or class of goods regarded by orders made under section 63(d) to have been entered under section 60(1), a document that, under the orders, the Chief Collector requires to be lodged with the Customs before the goods or class of goods will be regarded to be entered; and
- (d) for goods or class of goods regarded by orders made under section 75(b) to have been entered under section 74(1), a document that, under the orders, the Chief Collector requires to be lodged with the Customs before the goods or class of goods will be regarded to be entered.

(2) In this section:

'materially incorrect' means:

- (a) for an entry under section 60, that the entry contains an error or omission on any of the following matters:
 - (i) the identity of the overseas supplier;
 - (ii) the identity of the importer;
 - (iii) the identity of the person making the entry;
 - (iv) the identification of the importing craft or its voyage number;
 - (v) the bill of Lading, Air Waybill, or container identification details;

- (vi) the supplier's invoice number;
- (vii) any permit number or code;
- (viii) the Tariff item in which the goods are classified under the Customs Tariff Act 2014;
- (ix) the statistical quantity of the goods;
- (x) the currency code for the currency in which the goods are traded;
- (xi) the value for duty expressed in the currency in which the goods are traded;
- (xii) the value for duty expressed in the Republic currency;
- (xiii) the country of origin of the goods;
- (xiv) the country from which the goods have been exported;
- (xv) the amount paid or payable to transport the goods to the Republic from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country;
- (xvi) the insurance costs associated with transporting the goods to the Republic, inclusive of any insurance costs in the country of exportation;

(b) for an entry that is not an entry under section 60, that the entry contains a material error or omission in relation to a matter that the entry is required by or under this Act to address.

(3) Subject to section 144, if the Chief Collector is satisfied that an entry of goods contains an error or omission and that as a result:

(a) an amount of duty payable under this Act has not been paid or declared for payment or would not have been paid or declared for payment; or

(b) the entry is otherwise materially incorrect,—

the Chief Collector may give notice in writing to the person who made the entry stating that unless, within 20 working days after the date on which notice is given, that person satisfies the Chief Collector that the person is entitled to be exempted from the imposition of a penalty under section 144, the Chief Collector will issue a penalty notice under subsection (4).

(4) If a person to whom a notice is given under subsection (1) does not, within the period referred to in that subsection, satisfy the Chief Collector that the person is entitled to be exempted under section 144 from the imposition of a penalty under this section, the Chief Collector must issue a notice to that person requiring that person to pay to the Chief Collector by way of penalty (in addition to any duty payable under this Act):

(a) if, as a result of the error or omission, an amount of duty payable under this Act has not been paid or declared for payment—

(i) \$500; or

(ii) an amount equal to 25% of the duty unpaid or not declared, up to a maximum amount of \$25,000,—

whichever is the greater:

(5) The due date for the payment of any penalty imposed under this section is the date that is 20 working days after the date on which notice of the penalty is given by the Chief Collector.

(6) The amount of the penalty constitutes a debt due to the Republic and is recoverable by action at the suit of the Chief Collector on behalf of the Republic.

(7) A person, by or on whose behalf the amount of the penalty is paid for, is not liable to be prosecuted for an offence in relation to the error or omission; and the goods for which

the error or omission occurred are not liable to seizure under this Act.

(8) Subsection (7) does not apply to a prosecution or seizure in relation to goods that have been forfeited to the Republic by reason of the importation or exportation of the goods being prohibited or unlawful.

(9) If any penalty imposed under this section remains unpaid by the due date for payment, there must be imposed —

- (a) an additional penalty of 5% of the amount of the penalty unpaid by the due date; and
- (b) an additional penalty of 2% of the amount of the penalty, including any additional penalty, unpaid at the end of the period of one month after the due date; and
- (c) an additional penalty of 2% of the amount of the penalty, including additional penalty, unpaid at the end of each succeeding period of one month.

(10) Despite subsection (9), the Chief Collector may, in his or her discretion, remit or refund the whole or any part of any additional penalty imposed by that subsection.

(11) If the goods referred to in subsection (1) and entered under section 60 become free of duty or subject to a lower rate of duty under Part 1 or Part 2 of the Tariff after the entry is made, then the penalty must be calculated according to subsection (4)(a) as if the duty liability had not so changed.

(12) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

143. Obligation to pay penalty not suspended by appeal

(1) The obligation to pay and the right to receive and recover any penalty imposed under section 142 are not suspended by any appeal or legal proceedings.

(2) Subject to subsection (3), if the appellant is successful in the appeal, the amount of the penalty imposed under section 142 must immediately be refunded to the appellant by the Chief Collector.

(3) Section 109(3) applies, with necessary adaptations, to an administrative penalty required to be refunded under this section as if the penalty were duty.

144. No penalty in certain cases

A person is not liable to a penalty under section 142, if:

- (a) that person has voluntarily disclosed the error or omission to Customs before Customs has notified the person that—
 - (i) the goods to which the entry relates have been selected for examination by Customs;
 - (ii) documentation is required to be presented to Customs in relation to that entry;
 - (iii) Customs intends to conduct an audit or investigation on a selection of entries that includes that entry, or on entries made over a period of time that includes the time the entry was made; or
- (b) that person satisfies the Chief Collector that the person formed a view as to the relevant facts of the entry which, while incorrect, was reasonable having regard to the information available to that person when the entry was prepared; or
- (c) that person satisfies the Chief Collector that the person acted in good faith on

- information provided by the importer, exporter, or supplier of the goods to which the entry relates, and reliance on the accuracy or completeness of the information so provided was reasonable in the circumstances; or
- (d) the total correct value for duty of the goods to which the error on the entry relates is less than \$1,000; or
 - (e) an information for an offence against this Act has been laid in relation to the error or omission; or
 - (f) the period between the date of lodgement of the entry of the goods and the date on which the error or omission was first identified exceeds 4 years; or
 - (g) section 141 applies.

PART 12 - CUSTOMS ELECTRONIC ENTRY PROCESSING SYSTEMS

145. Establishment of and access to Customs electronic entry processing system

- (1) The Chief Collector may establish a Customs electronic entry processing system.
- (2) A person may not transmit to, or receive information from, a Customs electronic entry processing system unless that person is an individual who is registered by the Chief Collector as a user of that Customs electronic entry processing system.

146. Registered users

- (1) An individual who wishes to be a registered user:
 - (a) may, in the prescribed form, apply to the Chief Collector; and
 - (b) must provide other prescribed information.
- (2) The Chief Collector may require an applicant for registration to give such additional information as the Chief Collector considers necessary for the purpose of the application.
- (3) The Chief Collector:
 - (a) may grant the application, subject to conditions or refuse the application; and
 - (b) must, in writing, inform the applicant of the decision.
- (4) An applicant who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

147. Unique user identifier

- (1) The Chief Collector must allocate to a registered user a unique user identifier in a form or of a nature determined by the Chief Collector.
- (2) The unique user identifier allocated under subsection (1) must be used by the registered user for the purpose of transmitting information to or receiving information from that Customs electronic entry processing system.
- (3) The Chief Collector may, by notice in writing, impose conditions on a particular registered user, or on registered users generally, on the use and security of unique user identifiers.

148. Use of unique user identifier

- (1) If information is transmitted to an entry processing system using the unique user identifier of a registered user, the transmission of that information is, in the absence of proof to the contrary, evidence that the information was transmitted by the registered user.
- (2) If the unique user identifier of a registered user is used by an individual other than the registered user, subsection (1) does not apply if the registered user has, prior to the

unauthorised use of his or her unique user identifier, notified Customs that the unique user identifier is no longer secure.

149. Conditions may be imposed on registered users

(1) The Chief Collector may impose any condition on the existing registration on a specified registered user or a class of registered users or on all registered users.

(2) A condition imposed under subsection (1) must:

- (a) be notified in writing to one or more registered users concerned; and
- (b) unless one or more registered users concerned appeal under subsection (3), be complied with on or before—
 - (i) the 20th working day after the date of notification of the imposition of the condition on the registered user's registration; or
 - (ii) a later date specified by the Chief Collector.

(3) A registered user who is dissatisfied with the imposition of a condition on his or her user registration under subsection (1) may appeal in writing to the Minister within 20 working days after the date of notification of the imposition of the condition on the registered user's registration.

(4) If the Minister is of the view that the imposition of the conditions under subsection (1) was reasonable in the circumstances, the registered user must comply with the condition on or before—

- (a) the 10th working day after the date of notification of the Minister's decision; or
- (b) a later date specified by the Minister.

150. Suspension or cancellation of registration of registered user

(1) The Chief Collector may by written notice to a registered user (which must state grounds for the cancellation) cancel that user's registration if satisfied that the user—

- (a) has failed to comply with a condition imposed by the Chief Collector under section 146(3) or 147(3); or
- (b) has failed to comply with a condition imposed by the Chief Collector under section 149(1) within the time specified in that section; or
- (c) has been convicted of—
 - (i) an offence against this Act or the Illicit Drugs Control Act 2004; or
 - (ii) an offence involving dishonesty or cybercrime under any enactment; or
- (d) is, on 1 or more prescribed grounds, unfit to continue to be a registered user.

(2) Despite subsection (1), the Chief Collector may by written notice to a registered user (which must state grounds for the suspension) suspend that user's registration until a date or event specified in the notice if satisfied that the user's registration should not be cancelled, but should instead be suspended until that date or event, because the user—

- (a) has failed to comply with a condition imposed by the Chief Collector under section 146(3) or 147(3); or
- (b) has failed to comply with a condition imposed by the Chief Collector under section 149(1) within the time frame specified in that section.

(3) The date or event specified in the notice under subsection (2) may, but need not, be the user's compliance with a condition imposed by the Chief Collector under section 146(3), 147(3), or 149(1).

(4) If the person whose registration is suspended or cancelled is dissatisfied with the decision of the Chief Collector under this section, that person may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that

decision.

151. Customs to keep records of transmission

(1) Customs must keep a record of any transmission sent to or received from a registered user using a Customs electronic entry processing system.

(2) The record described in subsection (1) must be kept for a period of 7 years from the date of the sending of or the receipt of the transmission, or for any other prescribed period.

PART 13 - POWERS OF CUSTOMS OFFICERS

152. Patrols and surveillance

For the purposes of the detection of offences against this Act, a Customs officer may:

- (a) at any time and in a manner as the officer considers appropriate—
 - (i) patrol on or over any part of the foreshore or the banks of a river and a structure extending from it, or a part of the adjacent land, or a Customs place or Customs controlled area; and
 - (ii) enter and inspect an aircraft landing strip and a building on it; and
- (b) remain in the area, structure or building for the purposes of carrying out investigations or surveillance.

153. Landing or mooring of Customs craft

A Customs officer or a person-in-charge of a craft employed in the service of Customs may anchor, moor, berth, or land the craft, or haul the craft ashore, at any place within the Republic, without any charge or fee being levied against Customs.

154. Boarding craft

(1) A Customs officer may at any time board a craft that is within the Republic if:

- (a) the craft has arrived in The Republic from a point outside the Republic; or
- (b) the craft is departing from the Republic to a point outside the Republic, including while the craft is travelling within the Republic en route to a point outside the Republic; or
- (c) the craft (not being a craft to which paragraph (a) or (b) applies) is carrying any domestic cargo or international cargo while the craft remains within the Republic; or
- (d) the Customs officer has reasonable cause to suspect that the craft (not being a craft to which paragraph (a), (b) or (c) applies)—
 - (i) is carrying any dutiable, uncustomed, prohibited, or forfeited goods; or
 - (ii) has been, is being or is about to be, involved in the commission of an offence against this Act.

(2) The Chief Collector may station Customs officers on board any craft that has arrived in the Republic from a point outside the Republic for the purposes of carrying out any function or power that the officers may be required to carry out under this Act or any other enactment.

(3) If a Customs officer is stationed on board a craft under subsection (2), the person-in-charge of the craft must ensure that the officer is provided with:

- (a) suitable accommodation and board in accordance with the reasonable requirements of that officer; and

- (b) safe access to any part of the craft; and
 - (c) safe means of leaving the craft.
- (4) A charge or fee may not be levied against Customs for the carriage of a Customs officer who is stationed on board a craft or for his or her accommodation and board.

155. Searching of craft

(1) A Customs officer may search:

- (a) a craft that has arrived in the Republic from a point outside the Republic; or
- (b) a craft that is departing from the Republic to a point outside the Republic and at all times while the craft is travelling within the Republic en route to a point outside the Republic; or
- (c) a craft (not being a craft to which paragraph (a) or (b) applies) that is carrying any domestic cargo or international cargo while the craft remains within the Republic; or
- (d) a craft (not being a craft to which paragraph (a),(b) or (c) applies) that is within the Republic and that a Customs officer has reasonable cause to suspect—
 - (i) is carrying any dutiable, uncustomed, prohibited or forfeited goods; or
 - (ii) has been, is being, or is about to be involved in the commission of an offence against this Act,—

for the purpose of carrying out any function or power that the officer is required to carry out under this Act or any other enactment.

(2) When exercising the power under subsection (1), a Customs officer may:

- (a) by use of reasonable force, enter any part of the craft and open any package, locker, thing, or other place; and
- (b) examine all goods found on the craft.

156. Securing goods on craft

For the purpose of carrying out any function or power that Customs is required to carry out under this Act, a Customs officer may at any time while boarding or searching any craft under section 154 or 155:

- (a) secure, by appropriate means, goods on board that craft; or
- (b) remove goods on board that craft to a secure place.

157. Firing on ship

The officer commanding or officer-in-charge of, a craft in the Republic's service having hoisted and carrying or displaying the proper ensign or Customs flag must, at the request of the Chief Collector, within the Republic, chase any ship where:

- (a) the ship does not immediately bring-to when signalled or required to do so; or
- (b) the master refuses to permit the ship to be boarded,—

and may, as a last resort after having fired a warning, fire at or onto the ship to compel it to bring-to.

158. Detention of craft

(1) Subsection (2) applies to a Customs officer and a craft:

- (a) if the officer has reasonable cause to believe that an offence against this Act has been, is being, or is about to be committed on or in respect of the craft while it was or is within the Republic; or
- (b) if the craft is within the Republic, and the officer has reasonable cause to believe

that—

- (i) there is on the craft a person who was carried into the Republic on it; and
- (ii) the carriage of the person into the Republic on the craft constituted an offence against Part 8 or 9 of the Counter Terrorism and Transnational Organised Crime Act 2004.

(2) A Customs officer who has reasonable cause to believe that an offence against this Act has been, is being, or is about to be committed on or in respect of a craft while that craft was or is within the Republic may:

- (a) direct the craft to proceed to the nearest Customs place or any other place, as the officer considers appropriate; or
- (b) direct the craft to remain where it is, —

and in either case, detain the craft for any time and for the purposes as are reasonably necessary to carry out an investigation into the commission of the offence.

(3) If the person-in-charge of a craft attempts or threatens to cause the craft to depart from a place to which the craft has been directed to proceed or in which the craft has been directed to remain under subsection (2) without a certificate of clearance, a Customs officer may (in addition to any power of seizure under Part 15 for any offence so committed) seize and detain the craft until a certificate of clearance has been obtained, and, in that case, section 256 applies in the same manner as if the craft had been seized under Part 15.

159. Searching vehicles

(1) A Customs officer who has reasonable cause to suspect that there are in or on any vehicle that is within a Customs place:

- (a) any dutiable, uncustomed, prohibited, or forfeited goods; or
- (b) any evidence of goods under paragraph (a); or
- (c) any evidence of an offence against this Act,—

may stop the vehicle and search it and may detain the vehicle for a period as may be reasonably necessary for this purpose.

(2) A Customs officer or police officer who has reasonable grounds to believe that:

- (a) there are in, or on, any vehicle (not being a vehicle to which subsection (1) applies) any goods that have been unlawfully exported; or
- (b) there is evidence on the unlawful importation of any goods or an attempt to unlawfully export any goods,—

may stop the vehicle and search it and may detain the vehicle for a period as may be reasonably necessary for this purpose.

(3) If a Customs officer who has reasonable cause to suspect that there are in or on a vehicle any goods subject to the control of Customs and in a Customs-approved secure package or in a package for which a Customs seal has been used, the Customs officer may:

- (a) stop and search the vehicle; and
- (b) detain the vehicle—
 - (i) for a period as may be reasonably necessary for that purpose; and
 - (ii) to exercise the powers under section 175 on those goods.

(4) Powers under subsections (1) to (3) apply even if the vehicle need not be stopped because it is not moving, and whether or not it is attended, and include the power to use reasonable force, if necessary, to stop, detain, enter in or on, and search the vehicle (or for any other purposes) as authorised by that other subsection.

160. Questioning persons about goods and debt

(1) This section applies to:

- (a) a person who—
 - (i) has, within the preceding 72 hours, arrived in the Republic; or
 - (ii) is departing from the Republic; or
- (b) a person (not being a person to whom paragraph (a) applies) who is within a Customs controlled area licensed for—
 - (i) the temporary holding of imported goods for the purposes of the examination of those goods under section 176 (including the holding of the goods while they are awaiting examination); or
 - (ii) the disembarkation, embarkation or processing of persons arriving in or departing from the Republic; or
 - (iii) the processing of a craft arriving in or departing from the Republic or the loading or unloading of goods onto or from the craft; or
- (c) a person (not being a person to whom paragraph (a) applies) who is on board or is in the process of embarking onto or disembarking from a craft that has arrived from, or is departing to, a point outside the Republic, while the craft is within the Republic.

(2) A Customs officer may ask a person to whom this section applies a question on one or more of the following matters:

- (a) whether or not that person has or has had in that person's possession any dutiable, prohibited, uncustomed, or forfeited goods;
- (b) the nature, origin, value or intended destination of any goods described in paragraph (a);
- (c) whether, under this Act, any debt (for example, in respect of any duty, duty refunded in error, recovery of the drawback of any duty, or penalty) is due to the Republic and payable by the person, or by a company, trust, partnership, or other enterprise of which that person is or was a director, manager, secretary, officer or agent;
- (d) the nature and extent of any debt of that kind.

161. Questioning persons about identity, address, etc.

(1) This section and sections 164 and 166 apply to the following persons:

- (a) a person who—
 - (i) has, or is suspected of having, disembarked from a craft that has arrived in the Republic; and
 - (ii) has not, or is suspected of having not, reported to a Customs officer or a police station on the person's arrival, contrary to section 28;
- (b) a person who is, or is suspected of, attempting to depart from the Republic from a place other than from a Customs place, contrary to section 31.

(2) This section and sections 164 and 166 do not apply:

- (a) for a person referred to in subsection (1)(a), to a person whose actions are authorised by another section of this Act; and
- (b) for a person referred to in subsection (1)(b), to a person who is complying with a prescribed exemption or whose actions are authorised by Customs.

(3) A Customs officer may ask a person to whom this section applies a question on one or more of the following matters:

- (a) the person's identity;

- (b) the person's residential address;
 - (c) the person's travel movements;
 - (d) the person's entitlement to travel;
 - (e) any of the matters specified in section 160(2);
 - (f) the craft—
 - (i) from which the person disembarked or is suspected of disembarking; or
 - (ii) on which the person attempted to depart, or is suspected of attempting to depart, from the Republic;
 - (g) any other person who is, or was, involved in the person's arrival, suspected arrival, departure, attempted departure or suspected departure, whether or not the other person was on the craft—
 - (i) from which the person disembarked or is suspected of disembarking; or
 - (ii) on which the person attempted to depart, or is suspected of attempting to depart from the Republic.
- (4) A question under subsection (3)(f) may, but need not, relate to the craft's voyage and any person or goods carried by the craft.

162. Questioning employees of airlines, shipping companies, etc.

- (1) A Customs officer may question one or more of the following about any international cargo or domestic cargo:
- (a) a person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody or dispatch of international cargo or domestic cargo by that airline or shipping company; or
 - (b) a person employed by the licensee of a Customs controlled area licensed for—
 - (i) the temporary holding of imported goods for the purposes of the examination of those goods under section 175 (including the holding of the goods while they await examination); or
 - (ii) the processing of craft arriving in or departing from the Republic or the loading or unloading of goods onto or from the craft; or
 - (c) a person (not being a person described in paragraph (a) or (b)) who is in a Customs controlled area licensed for a purpose described under paragraph (b)(i) or (ii).
- (2) A Customs officer may question 1 or more of the following about any cargo destined to be exported from the Republic:
- (a) the owner or operator of a vehicle that, a Customs officer has reasonable cause to suspect, has in or on it, or has, within previous 72 hours, had in or on it, goods subject to the control of Customs and in a Customs-approved secure package or in a package to which a Customs seal has been used;
 - (b) the owner or occupier of premises that, a Customs officer has reasonable cause to suspect, have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of Customs and in a Customs-approved secure package or in a package to which a Customs seal has been used;
 - (c) an employee of a person described in paragraph (a) or (b).
- (3) A question under subsection (2) about cargo destined to be exported from the Republic may relate to 1 or more of the following:
- (a) whether, and if so how, goods that are or were some or all of the cargo are or were packed in a package to which a Customs seal was used or in a Customs-

- approved secure package to which a seal or marking of the kind referred to in section 86(1)(b) was used;
- (b) the transportation or storage of packages of the kind referred to in paragraph (a) at any time before they are or were exported;
 - (c) tampering or interference with a package of the kind referred to in paragraph (a) or with a seal or marking of the kind referred to in that paragraph.
- (4) Subsection (3) does not limit subsection (2).
- (5) This section does not limit sections 160 and 161.

163. Evidence of identity and entitlement to travel

- (1) This section applies to a person who is:
- (a) an internationally ticketed passenger using air or sea travel for a domestic sector; or
 - (b) a domestic passenger using air or sea travel for a domestic sector;
 - (c) within a Customs controlled area, or processing of disembarkation, embarkation, or processing of persons arriving in or departing from the Republic.
- (2) A person to whom this section applies must, on demand by a Customs officer:
- (a) state that person's full name and residential address; and
 - (b) if required, produce for inspection a prescribed document; or
 - (c) if the person is unable to produce the prescribed document, complete a prescribed declaration.
- (3) A demand under subsection (2)(b) or (c) may be made of a person only for the purpose of enabling Customs officer to establish 1 or all of the following:
- (a) the person's identity; or
 - (b) the person's travel movements; or
 - (c) the person's entitlement to air or sea travel for a domestic sector.
- (4) A prescribed document produced under subsection (2)(b) by a person to a Customs officer must be either:
- (a) inspected immediately and returned to the person, as soon as the inspection has concluded; or
 - (b) retained by Customs officer for as long as necessary to ascertain whether or not the Chief Collector wishes to exercise the power under section 190 to retain the document.
- (5) This section is subject to section 209.

164. Evidence of answers to questions under section 161

- (1) A person to whom this section applies pursuant to section 161 must, on demand by a Customs officer, produce documents that:
- (a) are in the person's possession or control; and
 - (b) relate to the matters the person has been questioned about under section 161.
- (2) When a person produces a document in response to a demand under subsection (1), a Customs officer may do 1 or more of the following:
- (a) inspect the document immediately and return it to the person, when the officer has finished inspecting it;
 - (b) inspect the document and retain it for the length of the person's detention under section 166;

- (c) inspect the document and retain it for as long as necessary to ascertain whether or not the Chief Collector wishes to exercise the power under section 188 to retain the document;
 - (d) inspect the document and remove it to make a copy under section 189;
 - (e) inspect the document and retain it under section 190.
- (3) This section is subject to section 209.

165. Detention of persons questioned about goods or debt

(1) If a Customs officer:

- (a) is not satisfied that the answer to a question put to the person under section 160 is correct; or
- (b) has not been given an answer to a question put to the person under section 160; or
- (c) is not satisfied as to a reason or explanation given by the person in respect of goods that are or have been, or that the officer suspects are or have been, in that person's possession or under that person's control,—

and the officer has reasonable cause to suspect that an offence has been, is being, or is about to be, committed against this Act by that person or any other person associated with that person, the officer may detain that person.

(2) A Customs officer may detain a person under subsection (1) only for the following purposes:

- (a) to enable the officer to make any inquiries as are necessary to establish whether the answer to the question or the reason or explanation is correct;
- (b) to obtain the attendance of, or make enquiries of, another Customs officer or of a person who is entitled to exercise any power to question, detain, or arrest a person under this Act.

(3) A person must not be detained under this section for a period exceeding 4 hours.

166. Detention of person questioned under section 161

(1) A Customs officer may detain a person to whom this section applies pursuant to section 161 for 1 or more of the following purposes:

- (a) to question the person under section 161;
- (b) to enable the officer to make the inquiries that are necessary to establish whether an answer to a question asked under section 161 is correct;
- (c) to obtain the attendance of, or make inquiries of, another Customs officer or an officer entitled to exercise a power to question, detain or arrest a person under this Act or the Criminal Procedure Act 1972 following the questioning of a person under section 161 of this Act.

(2) A Customs officer may detain a person under subsection (1) for up to 12 hours.

(3) The questioning of a person under section 161 must take place as soon as practicable after the person is detained under subsection (1).

(4) A Customs officer must release a person detained under subsection (1) immediately after the person answers the question asked under section 161 if the officer:

- (a) is satisfied that the person has correctly answered the questions; and
- (b) has no reasonable cause to suspect that the person questioned under that section has—
 - (i) committed an offence under section 216 by not complying with section 28 or 31; or

- (ii) committed an offence under section 154 or 155 of the Crimes Act 2013.
- (5) A Customs officer may continue to detain a person under subsection (1) after the person is questioned under section 161 if the Customs officer:
 - (a) is not satisfied that the person has correctly answered a question under section 161; or
 - (b) is not satisfied that the person has given an answer to a question asked under section 161; or
 - (c) has reasonable cause to suspect that the person questioned under that section has—
 - (i) committed an offence under section 216 by not complying with section 28 or 31; or
 - (ii) committed an offence under section 154 or 155 of the Crimes Act 2013.
- (6) Despite subsection (2), a person may be detained for a further reasonable period if, and only if, accident, stress of weather, or some other difficulty of transport or special circumstance makes it impossible for a Customs officer to do what is specified in subsection (1) within the 12-hour period specified in subsection (2).
- (7) Reasonable force may be used, if it is necessary, to detain a person under subsection (1).
- (8) In this section:
 - ‘detain’, for a person, includes to move the person to a Customs place or police station where the person may be, or may continue to be, questioned;
 - ‘further reasonable period’ means a period no longer than is necessary in the circumstances for a Customs officer to do what is specified in subsection (1).

167. Detention of persons committing or about to commit certain offences

- (1) A Customs officer and, for paragraph (b), a police officer may detain a person who, the Customs officer or, if applicable, the police officer, believes on reasonable grounds, is committing, or is about to commit, an offence under sections 216 or 228(1)(e) by:
 - (a) if a craft has arrived at a nominated Customs place or a Customs controlled area within that place under section 25, leaving or boarding the craft without the authority of a Customs officer before an inward report is made under section 27 (in contravention of section 25(2)); or
 - (b) if the person has arrived in the Republic, not reporting immediately to a Customs officer or a police station (in contravention of section 28(1)); or
 - (c) if the person has arrived in the Republic and reported to a Customs officer or a police station under section 28(1), leaving the Customs officer or police station to which the person reported, although a Customs officer or, if applicable, a police officer requiring the person to remain for a reasonable time in order that Customs officer or, if applicable, the police officer might exercise a power under this Act on the person (in contravention of section 28(2)); or
 - (d) if the person is on board a craft that has arrived in the Republic not complying with a Customs direction concerning disembarkation (in contravention of section 29(1)); or
 - (e) having disembarked from a craft that has arrived in the Republic, leaving a Customs controlled area when Customs requires the person to remain there for a reasonable time as is required to enable a Customs officer to exercise a power under this Act on that person (in contravention of section 29(3)); or

- (f) if the person is required to comply with a direction given under section 35(3), failing to comply with that direction.
- (2) A Customs officer or if applicable, a police officer may only detain a person under subsection (1) for the purpose of ensuring the person's compliance with 1 or more of the paragraphs in subsection (1).
- (3) A Customs officer, or, if applicable, a police officer must release a person detained under subsection (1) immediately after the person has complied with the requirements of the provision for which the person was detained and any other applicable paragraph in subsection (1).
- (4) Reasonable force may be used, if necessary, to detain a person under subsection (1).
- (5) A person must not be detained under subsection (1) if a Customs officer or, if applicable, a police officer believes on reasonable grounds that a person has already committed an offence under section 216 by contravening a paragraph in subsection (1).
- (6) This section does not prevent a person:
 - (a) being detained or further detained under another provision of this Act or under any other enactment if there are lawful grounds for that detention; or
 - (b) being arrested under section 206.
- (7) In this section, 'detention' includes the delivery of a person to a police station or the custody of a police officer.

168. Detention for public health or law enforcement purposes

- (1) A Customs officer may detain a person who:
 - (a) is required to comply with a direction given under section 36; and
 - (b) fails to comply with that direction.
- (2) If a Customs officer has reasonable cause to suspect that a person who is detained under section 165, 166 or 167 is a person to whom 1 or more of the provisions of section 36 apply, the Customs officer may:
 - (a) detain the person under this section as well as the other section; or
 - (b) if the detention under the other section has ended or is about to end, further detain the person under this section.
- (3) A Customs officer may detain or further detain a person under this section only for the purposes of obtaining the attendance of, or making inquiries of, another Customs officer who is authorised, for a matter specified in section 36(1), to do 1 or more of the following:
 - (a) question the person;
 - (b) ascertain or determine a matter relating to the status of the person;
 - (c) detain the person;
 - (d) arrest the person.
- (4) A person must not be detained or further detained under this section for a period exceeding the shorter of:
 - (a) 4 hours; or
 - (b) if the person's detention commenced under section 165 or 166, the maximum period for which the person could, at the time of his or her detention or further detention under subsection (2), have been detained under section 165 or 166.
- (5) Reasonable force may be used, if necessary, to detain or further detain a person under this section.
- (6) This section does not prevent a person:

- (a) being detained or further detained under another provision of this Act or under any other enactment if there are lawful grounds for that detention; or
 - (b) being arrested under section 206.
- (7) In this section, 'detention' includes the delivery of a person to a police station or into the custody of a police officer.

169. Persons to whom sections 170, 171(1), and 172 apply

Sections 170, 171(1), and 172 apply to:

- (a) a person on board a craft that has arrived in, or a craft that is about to depart from, the Republic; or
- (b) a person in the process of disembarking from, or embarking on to, a craft described in paragraph (a); or
- (c) a person who, having entered into the Republic at a Customs place, remains in that Customs place.

170. Preliminary search of persons by use of aids

(1) A Customs officer or a police officer may conduct a preliminary search of a person to whom this section applies, and may detain that person for the purposes of conducting that preliminary search.

(2) Sections 171 to 173 apply if, after a preliminary search under subsection (1), a Customs officer or a police officer has reasonable cause to suspect that a person has hidden on or about his or her person a thing described in section 171(1).

(3) A 'preliminary search' is a search that:

- (a) involves little or no physical contact between the person conducting the search and the person being searched; and
- (b) is conducted by using any aid, such as, a dog, chemical substance, x-ray or imaging equipment, or other mechanical, electrical, or electronic device, or any other similar aid, but not by any more invasive means.

171. Searching of persons if reasonable cause to suspect items hidden

(1) A Customs officer or a police officer may detain and search a person, if the officer has reasonable cause to suspect that a person to whom this subsection applies has hidden on or about his or her person:

- (a) any dutiable, uncustomed, prohibited or forfeited goods; or
- (b) evidence relating to any goods under paragraph (a); or
- (c) a thing that is or might be evidence of the contravention or possible contravention of this Act.

(2) Despite subsection (1), if a Customs officer or a police officer has reasonable grounds to believe that:

- (a) a person has within the preceding 24 hours arrived in the Republic at any place other than a Customs place; or
- (b) a person is about to depart from the Republic from any place other than a Customs place,—

and the Customs officer or police officer has reasonable cause to believe that the person has hidden on or about his or her person a thing described in subsection (1), the Customs officer or police officer may detain and search the person.

(3) Despite subsection (1) or (2), if a Customs officer or police officer has reasonable cause to believe that a person, other than a person described in subsection (2) or section

169, who is in a Customs place has hidden on or about his or her person a thing described in subsection (1), the Customs officer or police officer may detain and search the person.

(4) Reasonable force may be used, if necessary, to detain and search the person.

(5) If a person is detained under this section, and there is no suitable searcher available at the place where the search is to take place, the person detained may be taken to another place to be searched.

(6) A Customs officer or police officer who searches a person under this section may require another person, as the Customs officer or police officer thinks necessary, to assist the officer.

(7) A search of a person may be conducted under this section whether or not the person has earlier been the subject of a preliminary search under section 169.

172. Searching of persons for dangerous items

(1) A Customs officer or police officer may immediately detain and search a person to whom this section applies if, and only if, the Customs officer or police officer has reasonable grounds to believe that:

- (a) the person has a dangerous item hidden or in clear view on or about his or her person; and
- (b) the item poses a threat to the safety of the Customs officer, police officer or any other person; and
- (c) there is a need to act immediately in order to address that threat; and
- (d) a search under section 170 or 171(1) would expose the Customs officer, police officer, or any other person, to greater risk from the threat.

(2) Reasonable force may be used, if necessary, when detaining or searching a person under this section.

(3) A search may be conducted under this section whether or not the person has earlier been the subject of a search under section 170 or 171(1).

(4) A Customs officer or police officer who undertakes a search under this section must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (1) to:

- (a) for a Customs officer, the Chief Collector; and
- (b) for a police officer, the Commissioner of Police.

173. Seizure of items found

(1) A Customs officer or police officer may seize a thing found on or about a person when carrying out a search under section 171(1), (2), or (3) or 172 that the Customs officer or police officer has reasonable cause to suspect is:

- (a) a thing described in section 171(1); or
- (b) a dangerous item.

(2) Reasonable force may be used, if necessary, to seize:

- (a) a thing described in section 171(1); or
- (b) a dangerous item.

174. Access of Customs officers to Customs controlled area

Subject to section 205, a Customs officer may:

- (a) at any time of the day or night, enter any part of a Customs controlled area and examine goods in that area; and

(b) for that purpose, enter any other area that it is necessary to pass through.

175. Examination of goods subject to control of Customs

(1) A Customs officer may:

- (a) examine, weigh, analyse or test, or cause to be examined, weighed, analysed, or tested goods subject to the control of Customs or goods that the officer has reasonable cause to suspect are subject to the control of Customs; and
- (b) for that purpose, open or cause to be opened any packages in which the goods are contained or suspected to be contained.

(2) All reasonable expenses incurred by Customs under subsection (1), are a debt due to the Republic by the importer, exporter or the owner of the goods and are recoverable in the same manner as duty under this Act.

(3) The powers under subsection (1) extend to the examination, weighting, analysing or testing of a suitcase, pallet, bulk cargo container, or package.

(4) The examination:

- (a) may include physical or chemical testing, or may be facilitated by any means whatever, including the drilling into, or the dismantling of, the goods; and
- (b) may be facilitated by any means whatever (for example, by a dog, a chemical substance, x-ray or imaging equipment, or other mechanical, electrical or electronic device).

(5) Samples of goods subject to the control of Customs or suspected to be subject to the control of Customs may be taken and used by Customs for the purposes of this section and disposed of in the prescribed manner.

(6) A sample taken under subsection (5) is to be sufficient for the purpose for which it is taken.

(7) A Customs officer must, subject to section 205, be allowed free access to any land, building, or place, and to any goods in or on the land, building, or place, for the purpose of exercising powers under this section in respect of goods that are, or are suspected to be:

- (a) subject to the control of Customs; and
- (b) in a Customs-approved secure package or in a package to which a Customs seal has been applied.

(8) Despite subsection (7), a Customs officer must not enter a private dwelling except with the consent of an occupier or owner of that dwelling or under a warrant issued under this Act.

176. Examination of goods no longer subject to control of Customs

(1) This section applies to goods that have ceased to be subject to the control of Customs but that the Chief Collector has reasonable grounds to suspect are:

- (a) goods for which an offence against this Act has been committed; or
- (b) goods that are forfeited to the Republic under section 268.

(2) The Chief Collector may require a person who has, or who the Chief Collector believes has, possession or control of the goods to produce them for inspection by a Customs officer.

(3) A Customs officer may exercise in respect of the goods all the powers conferred by section 175.

(4) A Customs officer may:

- (a) take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers conferred by subsection (3); and

- (b) retain possession of the goods until completion of the investigation into the grounds for suspecting that the goods—
 - (i) are goods for which an offence against this Act has been committed; or
 - (ii) are goods that are forfeited to the Republic under section 268.

177. Accounting for goods

The Chief Collector may by notice in writing, require a CCA licensee to:

- (a) account immediately for goods that the Chief Collector believes have been entered into that Customs controlled area; and
- (b) produce any document on the movement of goods into or out of that Customs controlled area.

178. Production of goods

A Customs officer may require the CCA licensee to produce to the officer goods that are shown in any record as being within that area.

179. Verification of entries

(1) The Chief Collector may:

- (a) in addition to any declaration or documents required by this Act or by regulations or orders, require from a person making entry of goods proof by declaration or the production of documents of the correctness of the entry; and
- (b) refuse to deliver the goods or to pass the entry before the proof is provided.

(2) If the Chief Collector is not satisfied:

- (a) with the correctness of an entry on any goods; or
- (b) with any other aspect of the importation or exportation of the goods,—

the Chief Collector may detain the goods for a reasonable period to enable the goods to be examined and, if necessary, to cause an investigation to be made, whether in the Republic or another country, into the importation or exportation of the goods.

180. Securities for payment of duty

(1) The Chief Collector may require and take any prescribed securities for payment of duty.

(2) The Chief Collector may, pending the giving of the required security, refuse to pass an entry or to do any other act on any matter for which the security is required.

(3) A security may be required on a particular transaction, a class of transactions, or on transactions generally, and for a period and amount, and on conditions as to penalty or other conditions, as the Chief Collector may direct.

(4) The Chief Collector must approve the form in which the security is to be provided.

(5) Subject to sections 109 and 130, if the Chief Collector is satisfied that the obligations for which a security given under this section have been fulfilled, the person who gave the security must be released from the conditions of the security as soon as possible.

(6) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

181. New securities may be required

(1) The Chief Collector may (if at any time the Chief Collector is dissatisfied with the sufficiency of any security) require a new security in place of or in addition to the existing security.

(2) If the new security is not given, the Chief Collector may refuse to pass an entry or to do any other act on a matter for which the new security is required.

(3) A person who is dissatisfied with a decision of the Chief Collector under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

182. Written authority of agents

A Customs officer may:

- (a) require a person acting or holding himself or herself out as the agent of another person in a matter about this Act to produce a written authority from the person's principal; and
- (b) if the authority is not produced, refuse to recognise the agency.

183. Audit or examination of records

(1) A Customs officer may at all reasonable times enter any premises or places where records are kept under section 111 and audit or examine those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which records are created and stored.

(2) For the purposes of subsection (1), a Customs officer has, subject to section 205, full and free access to a land, building or place and to any book, record or documents, property, process or matter whether in the custody or under the control of the CCA licensee, importer, or exporter, or any other person, for the purpose of inspecting the book, record, document, property, process or matter that the officer considers:

- (a) necessary or relevant for the purpose of collecting a duty under this Act or for the purpose of carrying out any other function conferred on the officer; or
- (b) likely to provide any other information required for the purposes of this Act or of the function conferred on the officer.

(3) The Customs officer may, make extracts from or copies of the book, record, document, process or matter at no cost to Customs.

(4) Despite subsections (2) and (3), a Customs officer must not enter any private dwelling except with the consent of an occupier or owner or under a warrant issued under this Act.

184. Requisition to produce documents

(1) If:

- (a) a Customs officer has reasonable cause to suspect that goods have been unlawfully imported, exported, manufactured, undervalued, entered, removed, or otherwise unlawfully dealt with by a person contrary to this Act or that any other person intends to so import, export, manufacture, undervalue, enter, remove, or otherwise deal with any goods; or
- (b) goods have been seized under this Act,—

the Chief Collector may by notice in writing, require the person or the other person whom the officer suspects to be or to have been the owner, importer, exporter or manufacturer of the goods, or agent thereof, as and when required, to produce and deliver to the Customs officer or any other specified Customs officer all books of account, invoice-books, or other books, records or documents of account in which any entry or memorandum appears or may

be supposed to appear for the purchase, importation, exportation, manufacture, cost or value of, or payment for, the goods and any other goods so imported or exported for, the goods and otherwise dealt within a period of 7 years before the date of the notice.

(2) In addition to the requirements of subsection (1), the Chief Collector may require the owner, importer, exporter or manufacturer of the goods, or agent thereof, as and when required, to —

- (a) produce for the inspection of the Customs officer or any other specified Customs officer, and allow the officer to make copies of or extracts from, any of the documents, books, or records referred to in subsection (1); and
- (b) answer any question concerning those documents, books, or records.

185. Further powers in relation to documents

(1) The Chief Collector may, by notice in writing, require a person as and when required to:

- (a) produce for inspection by a specified Customs officer a document or record that the Chief Collector considers necessary or relevant to an investigation or audit under this Act;
- (b) allow the specified Customs officer to make copies of or to take extracts from the document or record;
- (c) appear before a specified Customs officer and answer any question put to the person about the goods or a transaction on the goods that are the subject of the investigation, or concerning the documents or records that are relevant to the investigation.

(2) Subsection (1) overrides section 7 of the Banking Act 1975 relating to secrecy.

186. Legal profession privilege

(1) Subject to subsection (2), any information or document is, for the purposes of legal professional privilege, privileged from disclosure if:

- (a) it is a confidential communication, whether oral or written passing between—
 - (i) a legal practitioner in his or her professional capacity and another legal practitioner in the capacity; or
 - (ii) a legal practitioner in his or her professional capacity and his or her client, — whether made directly or indirectly through an agent of either; and
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of an offence or wrongful act.

(2) If the information or document consists wholly of payments, income, expenditure or financial transactions of a specified person (whether a legal practitioner, the practitioner's client or any other person), it is not privileged disclosure if it is contained in, or comprises the whole or part of, a book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner under the Legal Practitioners Act 1973.

(3) Except as provided in subsection (1), an information or document is, for the purposes of legal professional privilege, not privileged from disclosure on the ground that it is a communication passing between one legal practitioner and another legal practitioner or between a legal practitioner and his or her client.

(4) If a person refuses to disclose any information or document on the ground that it is privileged under this section, a Customs officer or that person may apply to a Judge for an order as to whether or not the claim of privilege is valid; and, for the purposes of determining the application, the Judge may request the information or document to be produced to him or her.

(5) In this section, 'legal practitioner' has the same meaning as 'practitioner' in section 2 of the Legal Practitioners Act 1973.

187. Documents in foreign language

If a document in a foreign language is presented to a Customs officer to carry out any duty or power of Customs under this Act or any other enactment, the officer may require the person who presented the document to supply to the officer an English translation of the document prepared by the person, as the officer may approve and at the expense of the person who presented it.

188. Chief Collector may take possession of and retain documents and records

(1) The Chief Collector may take possession of and retain a document or record presented on an entry or required to be produced under this Act.

(2) If the Chief Collector takes possession of a document or record under subsection (1), the Chief Collector must, at the request of the person entitled to the document or record, provide that person with a copy of the document certified by or on behalf of the Chief Collector under the seal of Customs as a true copy.

(3) The certified copy is admissible as evidence in court.

189. Copying of documents obtained during search

(1) A Customs officer who carries out a search, inspection, audit or examination under this Act and has reasonable cause to believe that documents coming into his or her possession during the search, inspection, audit, or examination are evidence of the commission of an offence against this Act, may remove the documents for the purpose of making copies.

(2) Subject to section 190, the documents must, as soon as practicable after copies of the documents have been taken, be returned to the person entitled to them.

(3) A copy of document certified by or on behalf of the Chief Collector under the seal of Customs is admissible as evidence in court.

190. Retention of documents and goods

(1) If a Customs officer:

(a) carries out any search, inspection, audit, or examination under this Act; and

(b) has reasonable cause to believe that any documents or goods coming into his or her possession during the search, inspection, audit, or examination are evidence of the commission of an offence against this Act, or are intended to be used for the purpose of committing an offence against this Act,–

the officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) A Customs officer who takes possession of a document under subsection (1), must, at the request of the person entitled to the document, provide that person with a copy of the document certified by or on behalf of the Chief Collector under the seal of Customs as a true copy.

- (3) The certified copy is admissible in evidence in courts.
- (4) If a Customs officer takes possession of and retains documents or goods under this section, the following provisions apply:
- (a) in any proceedings for an offence relating to the documents or goods, a court may order, either the hearing or on a subsequent application, that the documents or goods be delivered to the person appearing to the court to be entitled to them, or that they be disposed of in a manner and under any conditions as the court thinks fit;
 - (b) a Customs officer may at any time, unless an order has been made under paragraph (a), return the documents or goods to the person from whom they were taken or apply to a Judge for order to their disposal; and on the application the a Judge may make an order that a Court may make under paragraph (a);
 - (c) if proceedings for an offence relating to the goods or documents are brought within a period of 3 months after the date on which possession of the document or goods was taken, a person claiming to be entitled to the goods or documents may, after the expiration of that period, apply to a Judge for an order that the goods or documents be delivered to that person; and on the application, the Judge may adjourn the application, on terms as the Judge thinks fit, for proceedings to be brought, or may make any order that a court may make under paragraph (a).
- (5) If a person is convicted in proceedings for an offence relating to documents or goods to which this section applies, and an order is made under this section, the order is suspended:
- (a) in any case, until the expiration of the time prescribed any rules made pursuant to the time prescribed by Parts II and Part V of the Appeals Act 1972 for the filing of notice of appeal or of an application for leave to appeal; or
 - (b) if a notice of appeal is filed within the prescribed time as required under paragraph (a), until the determination of the appeal; or
 - (c) if an application for leave to appeal is filed within the prescribed time as required under paragraph (a), until the application is determined and, if leave to appeal is granted, until the determination of the appeal.
- (6) If the order is suspended until the determination of the appeal, the court determining the appeal may, by order, annul or vary the order made under this section; and that order, if annulled does not take effect, and, if varied, takes effect as so varied.

191. Detention of goods suspected to be tainted property

A Customs officer may, without warrant, seize and detain goods if:

- (a) the goods are in the Republic and the officer is satisfied that they either—
 - (i) are being, or are intended to be, exported from the Republic; or
 - (ii) are being, or have been, imported into the Republic; and
- (b) the goods came to the officer's attention or possession, during a search, inspection, audit, or examination under—
 - (i) this Act; or
 - (ii) the Anti Money Laundering Act 2008; or
 - (iii) Part 6 of the Proceeds of Crimes Act 2004 (which relates to reporting of imports and exports of cash) and
- (c) the officer has good cause to suspect that the goods are tainted property under the Proceeds of Crimes Act 2004.

192. Return of cash necessary to satisfy essential human needs

(1) The power to detain goods under section 191 does not extend to, and the Customs must if practicable return immediately, cash seized under section 191 if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy essential human needs—

- (a) of (or of a dependant of) an individual from whom the cash has been seized; and
- (b) arising on, or within 7 days after, the date on which detention would otherwise be effected.

(2) Customs is not required under subsection (1) to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.

(3) If the 7-day period referred to in section 194(1)(a) is extended under section 195, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days is to be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

193. Further provisions about detention under section 191

(1) Reasonable force may be used, if necessary, to seize or detain goods under section 191.

(2) If the person from whom goods have been seized and detained under section 191 is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in any mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure, as soon as practicable.

(3) Goods detained under section 191 are to be taken to a place of security as a Customs officer directs, and there detained, unless section 196 applies.

(4) Section 191 does not limit or affect powers under the following enactments:

- (a) the rest of this Act (for example, Part 15);
- (b) Mutual Assistance in Criminal Matters Act 2004;
- (c) Proceeds of Crime Act 2004;
- (d) Anti Money Laundering Act 2008;
- (e) Counter Terrorism and Transnational Organised Crime Act 2004;
- (f) any other prescribed enactment.

194. Return of goods detained under section 191

(1) In this section, 'investigation period', for goods seized and detained under section 191:

- (a) means the period of 7 days after the date on which the goods were seized and detained; and
- (b) includes an extension of that period granted by the District Court under section 195.

(2) Goods seized and detained under section 191 are to be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:

- (a) the completion of all relevant investigations, if they show that the goods are not tainted property;
- (b) the expiry of the investigation period.

- (3) However, the Customs need not return the goods as provided in subsection (2), and may continue to detain them until the relevant proceedings or requests (including any resulting applications) are determined if, on or before the expiry of the investigation period:
- (a) an information is laid on the relevant serious offence (as defined in section 2 of the Proceeds of Crime Act 2004); or
 - (b) a foreign country makes a request to the Solicitor General under Part 4 of the Mutual Assistance in Criminal Matters Act 2004.

195. Extension of 7-day period in section 194(1)(a)

- (1) The 7-day period in section 194(1)(a) may be extended (once only) by order of the District Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, the Court is satisfied:
- (a) that the good cause to suspect required by section 191(c) exists; and
 - (b) that the extension to be granted is necessary to complete any investigations in the Republic or another country about the goods.
- (2) The application must:
- (a) be made in writing and served on the person from whom the goods were seized (if that person can be identified and located); and
 - (b) include the following particulars—
 - (i) a description of the goods detained;
 - (ii) the date on which the detention commenced;
 - (iii) a statement of the facts supporting the good cause to suspect required by section 191(c);
 - (iv) a statement of reasons why the extension sought is necessary to complete any investigations in the Republic or another country, in relation to the goods.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- (4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

196. Custody of certain goods detained under section 191

- (1) If goods detained under section 191 are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either:
- (a) the person from whom the goods have been seized; or
 - (b) any other person authorised by the Customs officer and with the person's consent to having the custody.
- (2) A person who has the custody of goods under subsection (1) must, until a final decision is made under section 194 as to whether or not they are to be returned, hold them in safe-keeping, without charge to the Republic and under any reasonable conditions that may be imposed by the Customs.
- (3) A person to whom subsection (2) applies must also:
- (a) make the goods available to a Customs officer on request; and
 - (b) not alter, or dispose of, the goods, or remove them from the Republic, unless the person is authorised to do so by a Customs officer; and
 - (c) return the goods on demand to the custody of the Customs.

197. Search warrants

(1) A Supreme Court Judge, District Court Judge, or Registrar ('the issuer') may issue a search warrant in the prescribed form if the issuer is satisfied, on an application by a Customs officer in writing made on oath, that there are reasonable grounds to believe that there is in or on any place:

- (a) a thing that there are reasonable grounds to believe may be evidence of the commission of an offence against this Act or regulations; or
- (b) a thing that there are reasonable grounds to believe is intended to be used for the purpose of committing an offence against this Act or any regulations; or
- (c) a thing that is liable to seizure under this Act.

(2) The Customs officer, when applying for a warrant must, having made reasonable enquiries, disclose on the application details of any other application that the Customs officer knows of the place or thing specified, any offence, and the result of that other application.

(3) A search warrant is to be:

- (a) directed to and executed by, a designated Customs officer; or
- (b) directed to all Customs officers and executed by any of them.

(4) A warrant may be issued subject to any reasonable conditions, as the issuer specifies in the warrant.

198. Entry and search under warrant

(1) A search warrant authorises the Customs officer executing the warrant:

- (a) to enter and search the place or thing on one occasion within 10 working days of the date of issue of the warrant at any time that is reasonable in the circumstances, but subject to any conditions imposed by the issuer under section 197(4); and
- (b) to use any assistance as is reasonable in the circumstances; and
- (c) to use any force for making entry (whether by breaking open doors or otherwise) and for breaking open a thing as is reasonable in the circumstances and for preventing the removal from the premises of a thing as is reasonable in the circumstances.

(2) A search warrant authorises the Customs officer executing the warrant to search for and seize a thing referred to in section 197(1) and, while on the premises under the warrant, to seize either or both of the following:

- (a) any other thing that the officer finds and has reasonable cause to suspect may be evidence of the commission of an offence for which that officer could have obtained a warrant under section 197(1);
- (b) a dangerous item in the circumstances described in section 199(2).

(3) A search warrant authorises the Customs officer executing it:

- (a) to detain a person who is at the place referred to in the warrant when the officer arrives at that place, or who arrives at that place when the officer is executing the warrant, until the officer is satisfied that the person is not connected with the thing referred to in the warrant; and
- (b) to search a person who is at the place referred to in the warrant when the officer arrives at that place, or who arrives at that place while the officer is executing the warrant if, at any time while executing the warrant, the officer reasonably believes that the thing referred to in the warrant may be on the person's body.

(4) A person who is at the place referred to in the warrant when the officer executing the warrant arrives at that place, or who arrives at that place while the officer is executing the warrant, must remain at that place until the earlier of the following events occurs:

- (a) the search of that place is completed; or
- (b) the officer, being satisfied that the person is not connected with the thing referred to in the warrant, permits the person to leave.

(5) A person who is being searched under subsection (3)(b) must remain at the place where the person is being searched until the search is completed.

(6) A Customs officer or police officer who has reasonable cause to suspect that a person has by failing to comply with subsection (4) or (5) committed an offence against section 225 may under section 206(1) or (2) arrest that person without warrant while that cause to suspect continues and before the end of the 7th day after the date on which it arose.

(7) A person may not be detained under subsection (3)(a) or (b) for a period of time that is unreasonable.

(8) Reasonable force may be used, if it is necessary to detain a person under subsection (3)(a) or to search a person under subsection (3)(b).

(9) If there is no suitable searcher available at the place where the search is to take place, the person to be searched may be taken to another place to be searched.

(10) A Customs officer or police officer may seize a thing found in carrying out the search of the person that the Customs officer or police officer has reasonable cause to believe is a thing referred to in the warrant, and reasonable force may be used, if necessary, to seize the thing.

(11) A person called upon to assist the Customs officer or police officer executing the warrant has, for that purpose, the powers referred to in subsections (1)(c) and (2).

199. Searching of persons for dangerous items when executing search warrant

(1) This section applies to a person who is at the place referred to in the search warrant when the Customs officer arrives at that place, or who arrives at that place when the officer is executing the warrant.

(2) A Customs officer may immediately detain and search a person to whom this section applies for a dangerous item, and may seize the item under section 198(2) if, and only if, the officer has reasonable grounds to believe that:

- (a) the person has a dangerous item hidden or in clear view on or about his or her person; and
- (b) the item poses a threat to the safety of the officer or any other person; and
- (c) there is a need to act immediately in order to address that threat.

(3) Reasonable force may be used, if necessary, for 1 or more of the following purposes:

- (a) to detain the person;
- (b) to search the person;
- (c) to seize any dangerous item found in carrying out a search under subsection (2).

(4) A search may be conducted under this section whether or not the person has earlier been the subject of a search under section 198.

(5) A Customs officer who undertakes a search under this section must, within 3 working days of the search, give the Chief Collector a written report of the search, the circumstances in which it was conducted (including any use of force), and the matters that gave rise to the reasonable grounds to believe required by subsection (2).

200. Detention of dangerous items

(1) A Customs officer may detain goods seized in the course of exercising a power of search under section 198 or 199(2), if the officer believes on reasonable grounds that the goods are dangerous items.

(2) A Customs officer who detains goods under subsection (1) must:

- (a) as soon as practicable, deliver those goods into the custody of the Police; or
- (b) comply with section 202 and retain those goods if the goods may be required for a proceeding under this Act.

(3) When goods are delivered under subsection (2), responsibility for them passes from Customs to the Police.

(4) Section 84 of the Criminal Procedure Act 1972 applies, with any necessary modification, to goods detained under subsection (1) of this section.

201. Search warrant to be produced

(1) A Customs officer executing a search warrant must:

- (a) produce the warrant for inspection upon initial entry and in response to any reasonable request made subsequently; and
- (b) when requested by or on behalf of the owner or occupier, provide a copy of the warrant no later than 5 working days after the making of the request.

(2) Subject to subsection (3), if the owner or occupier of the place being searched or the owner of the thing being searched, is not present at the time of the search, the Customs officer executing the warrant must leave in a prominent position at the place being searched or attached to the thing searched, a written notice stating the date and time of the execution of the warrant and the name of the Customs officer-in-charge of the search.

(3) If the Customs officer executing the warrant believes that a notice under subsection (2), would unduly prejudice subsequent investigations, the officer may refrain from leaving the notice and, in that event, must, within 5 working days apply to a Judge for an order to confirm the decision.

(4) If the Judge refuses to confirm the decision, the officer who executed the warrant must immediately notify, or cause to be notified, the owner or occupier of the place searched or the owner of the thing searched, of the particulars referred to in subsection (2).

202. Duty to inform owner where things seized

(1) Except in any case to which section 201(3) applies and continues to apply following a decision under section 201(3) or unless a Judge because of exceptional circumstances otherwise orders, the person executing the warrant must, within 5 working days after the seizure of a thing inform the owner or occupier of the place searched or the owner of the thing searched of the fact that something has been seized and of the place from where it was seized.

(2) The Customs officer executing the warrant must inform the owner or occupier:

- (a) by delivering to the owner or occupier a written notice containing any information;
or
- (b) by leaving the notice in a prominent position at the place searched or attached to the thing searched; or
- (c) by sending the notice to the owner or occupier by registered mail; or

(d) by informing the owner or occupier in any other manner, as a Judge orders in any particular case.

(3) A person affected by the execution of a search warrant may apply to a Judge for an order for the disclosure of the application for the warrant, and any document submitted in support of the application; and the Judge may, if satisfied that the disclosure of the information will not prejudice the safety of any person, order the disclosure of the whole or any part of the application and supporting document.

203. Emergency warrants

(1) If a Supreme Court Judge, District Court Judge or a Registrar ('issuer') is satisfied, on an application made by a Customs officer, that:

(a) circumstances exist that would justify the grant of a search warrant under section 197; but

(b) the urgency of the situation requires that the search should begin before a warrant under that section could with all practicable diligence be obtained,–

the issuer may, orally or in writing, grant an emergency warrant to Customs officer making the application to search for and seize the thing that is believed to be in or on a particular place, premises, or thing.

(2) An application for an emergency warrant may be made orally, but the application must comply with section 197.

(3) The Customs officer making the application must, at the time of the making the application, make a note in writing of the particulars of the application.

(4) An issuer who grants the application for an emergency warrant, must immediately make a note in writing of the particulars of the application (the note is to be filed in the Court Registry, and is, for the purposes of section 197(1), treated as an application under that section.

(5) A Customs officer executing an emergency warrant must:

(a) produce the note made under subsection (3) for inspection upon initial entry and in response to any reasonable request thereafter; and

(b) when requested, provide a copy of the note no later than 5 working days after the making of the request.

(6) Sections 198, 201(2) to (4) and 202, with necessary modifications, apply to emergency warrants in the same manner as they apply to search warrants.

(7) An emergency warrant remains valid for 12 hours from the time when the authorisation is given, and then expires.

(8) As soon as practicable after an emergency warrant has expired, the Customs officer who applied for it, or, if the officer is not able to do so, another Customs officer must provide a written report, in the prescribed form, to the issuer who granted the emergency warrant setting the manner in which the emergency warrant has been executed and the results obtained by the execution of the warrant.

204. Use of aids by Customs officer

(1) In exercising any power of boarding, entry, examination, or search conferred by this Act, a Customs officer or any police officer may have with him or her, and use for the purposes of searching, a dog, a chemical substance, x-ray or imaging equipment, or any other mechanical, electrical or electronic device.

(2) This section does not apply to a search warrant carried out on residential premises except under a warrant issued under section 197 or 203.

205. Conditions applying to entry of buildings

Despite anything in this Act, a provision of this Act that confers on a Customs officer the power to enter a building, whether or not under the authority of a warrant, is subject to the following conditions that the officer must:

- (a) first give reasonable notice of the intention to enter, unless giving of the notice would frustrate the purpose of the entry;
- (b) enter the building at a time that is reasonable in the particular circumstance, unless giving of the notice would frustrate the purpose of the entry;
- (c) produce his or her identity card on initial entry, and if requested at any time after the initial entry;
- (d) clearly state his or her authority for and the purpose of the entry to the owner or occupier of the building if he or she is present.

206. Arrest of suspected offenders

(1) A Customs officer who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this Act punishable by imprisonment, or an offence against section 250, may, while that cause to suspect continues and before the end of the 7th day after the date on which the suspicion arose, arrest that person without warrant.

(2) A Customs officer who has reasonable cause to suspect that a person has carried some other person into the Republic on a craft, and that the carriage of the other person into the Republic on the craft constitutes an offence against Part 8 and 9 of the Counter Terrorism and Transnational Organised Crime Act 2004 may, while that cause to suspect continues and before the end of the 7th day after the date on which the suspicion arose, and on the craft or elsewhere, arrest the person without warrant.

(3) A police officer who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against section 211, 225, 250, or 252 may, while that cause to suspect continues and before the end of the 7th day after the date on which the suspicion arose, arrest that person without warrant.

(4) If a Customs officer arrests a person under this section, the officer must, unless the person is sooner released, as soon as practicable call a police officer to his or her aid and deliver the arrested person into the custody of that police officer.

207. Protection of persons acting under authority

The Minister, the Chief Collector, a Customs officer, a police officer, or an authorised person is not personally liable for the loss of or damage to any document, goods, vehicle or craft occasioned by anything done or omitted to be done, or purporting to have been done, in good faith, when carrying out a function, duty of power under this Act.

208. Seizure and detention of dangerous goods

(1) A Customs officer may seize and detain goods that are presented or located in the course of exercising any power of inspection, search or examination under this Act, if the officer has cause to suspect on reasonable grounds that the goods:

- (a) are dangerous goods that may not be lawfully carried on an aircraft; and
- (b) are proposed to be carried by an operator.

(2) A Customs officer who detains goods under subsection (1), must, as soon as practicable, deliver those goods into the custody of the General Manager of Airport Authority.

(3) When goods are delivered under subsection (2), responsibility for them passes from Customs to Airport Authority.

(4) In this section:

‘Airport Authority’ means the Republic Airport Authority established by the Airport Authority Act 2012;

‘General Manager’ means the person appointed as such under the Airport Authority Act 2012;

‘operator’ means a person who operates within the meaning of ‘operate’ as defined under section 2 of the Civil Aviation Act 1998.

209. Unlawful travel document

(1) In this section:

‘false’, for a travel document, means that the travel document contains information purporting to relate to the person to whom it was issued (being information supplied by or on behalf of the person as part of or in connection with the person’s application for the document) that:

- (a) is false; or
- (b) relates in fact to some other person;

‘forged’, for a travel document, means that the travel document—

- (a) has not been issued by the government by which it purports to have been issued; or
- (b) has been altered without authority;

‘misused’ for a travel document, means that the travel document has been, is being, or is intended to be used for the purposes of identification by a person who is not the person for whom the document was issued;

‘travel document’ means any document that is or purports to be:

- (a) a permit within the meaning of the Immigration Act 2014; or
- (b) a passport that has been issued by the government of any country; or
- (c) a certificate of identity that has been issued by the government of any country; or
- (d) a refugee travel document that has been issued by the government of any country;

‘unlawful travel document’:

- (a) means a travel document that is false, forged, or misused; and
- (b) includes any item involved in the production of a document referred to in paragraph (a) or in the unauthorised alteration of a travel document.

(2) A Customs officer may retain or seize any document presented for inspection if a Customs officer has reasonable cause to suspect that the document is an unlawful travel document.

(3) A Customs officer may seize a document found in the course of a search or examination under this Act if a Customs officer has reasonable cause to suspect that the document is an unlawful travel document.

(4) For the purpose of this section, sections 23, 154, 155, 159, 160, 165, or 170 is to be read as if the unlawful travel document is a prohibited good.

(5) Any document or goods retained or seized under this section must be dealt with under section 210.

(6) Section 210(2) to (5) apply, with necessary modifications, to any documents or goods retained or seized under this section.

210. Seizure and detention of goods suspected to be certain risk goods or evidence of commission of certain offences

(1) A Customs officer may seize and detain goods or documents that are presented or located in the course of exercising a power of inspection, search, or examination under this Act, if the officer has cause to suspect on reasonable grounds that the goods:

- (a) are regulated articles under the Quarantine Act 1908 for which no quarantine clearance has been given under that Act; or
- (b) are evidence of the commission of any offence under—
 - (i) section 154 or 155 of the Crimes Act 2013; or
 - (ii) the Fisheries Act 1997.

(2) A Customs officer who detains goods under subsection (1) must, as soon as practicable, deliver those goods into the custody of:

- (a) if the Customs officer believes that subsection (1)(a) or (b)(ii) applies to the goods, the Secretary of the Department responsible for the Quarantine Act 1908 or the Fisheries Act 1997; or
- (b) if the Customs officer believes that subsection (1)(b)(i) applies to the goods, a police officer.

(3) Once goods have been delivered to a person under subsection (2), responsibility for those goods passes to that person.

(4) Section 84 of the Criminal Procedure Act 1972 applies, with necessary modification, to goods detained under subsection (1).

PART 14 - OFFENCES AND PENALTIES

Division 1 – Offences in relation to Customs

211. Threatening or resisting Customs officer

(1) A person commits an offence who:

- (a) threatens or assaults; or
 - (b) by force, resists or intentionally obstructs or intimidates, –
- a Customs officer when carrying out the officer’s duties or a person acting in the officer’s aid.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

212. Obstructing Customs officer or interfering with Customs property

(1) A person commits an offence who:

- (a) otherwise than by force, intentionally obstructs a Customs officer when carrying out the officer’s functions, duties or powers; or
- (b) intentionally interferes with any equipment, vehicle, craft, dog, communications system, or other aid, used or intended for use, by Customs; or

- (c) does any act with the intention of impairing the effectiveness of any equipment, vehicle, craft, dog, communications system, or other aid used, or intended for use, by Customs.
- (2) A person convicted of an offence against this section is liable to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 5 years or both.

213. False allegation or report to Customs officer

- (1) A person commits an offence who:
 - (a) contrary to the fact and without a belief in the truth of the statement, makes or causes to be made to a Customs officer a written or verbal statement alleging that an offence has been committed or is about to be committed; or
 - (b) with the intention of causing wasteful deployment, or of diverting deployment, of the Customs personnel or resources, or being reckless as to that result—
 - (i) makes a statement to any other person that gives rise to serious apprehension for that other person's own safety or the safety of another person or property, knowing that the statement is false; or
 - (ii) behaves in a manner that is likely to give rise to an apprehension, knowing that the apprehension would be groundless.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

214. Personation of a Customs officer

- (1) A person commits an offence who:
 - (a) not being a Customs officer, by words, conduct, or demeanour pretends to be a Customs officer or an authorised person, or wears or uses the uniform, name, designation or description of a Customs officer; or
 - (b) without authority, represents any craft, vehicle, or other conveyance as being in the service of Customs.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 5 years, or both.

215. Counterfeit seals or marks

- (1) A person commits an offence who, without lawful authority or excuse, has in his or her possession, or makes, or uses any counterfeit, seal, stamp, marking, substance, or device in imitation of or closely resembling any seal, stamp, marking, substance, or device used by Customs for the purposes of this Act.
- (2) A person convicted of an offence under subsection (1) is liable:
 - (a) for an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 6 years, or both; and
 - (b) for a body corporate, to a fine not exceeding \$100,000.

216. Obligations of persons arriving in or departing from the Republic

- (1) A person commits an offence who wilfully fails to comply with any requirement imposed on that person under any of sections 28 to 36 (other than section 34).
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$20,000.

217. Unauthorised presence in certain Customs controlled areas

(1) A person commits an offence who, without the permission of a Customs officer, enters into, or remains in when directed by a Customs officer to leave, a Customs controlled area licensed for:

- (a) the temporary holding of imported goods for the purposes of the examination of those goods under section 175 (including the holding of the goods while they are awaiting examination); or
- (b) the disembarkation, embarkation, or processing of persons arriving in or departing from the Republic; or
- (c) the processing of a craft arriving in or departing from the Republic or the loading or unloading of goods onto or from the craft,–

when that area is being, or is about to be, used for any of the purposes for which it is licensed.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$10,000.

218. Unauthorised access to or improper use of Customs electronic entry processing system

(1) A person commits an offence who:

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any Customs electronic entry processing system; or
- (b) having lawful access to any Customs electronic entry processing system, knowingly uses or discloses information obtained from the system for an unauthorised purpose; or
- (c) knowing that he or she is not authorised to do so, receives information obtained from any Customs electronic entry processing system and, uses discloses, publishes, or disseminates the information.

(2) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 6 years, or both; and
- (b) for a body corporate, to a fine not exceeding \$100,00.

219. Interference with Customs electronic entry processing system

(1) A person commits an offence who:

- (a) by any means knowingly falsifies any record or information stored in any Customs electronic entry processing system; or
- (b) knowingly damages or impairs any Customs electronic entry processing system; or
- (c) knowingly damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs electronic entry processing system is held or stored, unless permitted by the Chief Collector.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 6 years, or both.

220. Offences in relation to security of, or unauthorised use of, unique user identifiers

(1) A registered user commits an offence who contravenes a condition imposed, by the Chief Collector, on the security of the registered user's user identifier.

(2) A person commits an offence who:

- (a) not being a registered user, uses a unique user identifier; or
- (b) being a registered user, uses the unique user identifier of any other registered user, –

to authenticate a transmission of information to Customs electronic entry processing system.

(3) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding \$20,000.

Division 2 – Offences in relation to Customs officers' powers

221. Failure to answer questions

(1) A person commits an offence who, when required under this Act to answer a question put to that person:

- (a) without reasonable excuse, fails or refuses to answer it; or
- (b) gives an incorrect answer.

(2) It is a defence to an offence against this section if the person provides that he or she did not, when required to answer the question, have the information required to answer the question in his or her knowledge, possession, or control or honestly and reasonably believed that the answer was, in all the circumstances, correct at that time.

(3) It is not a reasonable excuse for the purposes of subsection (1)(a), if a person fails or refuses to answer a question on the grounds that to answer the question would or might incriminate or tend to incriminate that person.

(4) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$5,000; and
- (b) for a body corporate, to a fine not exceeding \$10,000.

222. Failure to produce evidence of identity, entitlement to travel or other matters

A person who fails without reasonable excuse to comply with a demand made under section 163 or 164 commits an offence and is liable on conviction to a fine not exceeding \$5,000.

223. Failure to produce or account for goods

(1) A person commits an offence who fails or refuses to produce or account for any goods when required to do so under section 176, 177 or 178 commits an offence and is liable on conviction to a fine not exceeding \$20,000.

(2) It is a defence to an offence against this section if the person proves that he or she did not have possession or control of the goods or was otherwise unable, for good reason, to comply with the Chief Collector's requirements.

224. Failure to comply with requisition

(1) A person who contravenes a requirement of the Chief Collector under section 184 or 185 commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding \$50,000; and
- (b) for a body corporate, to a fine not exceeding \$100,000.

(2) It is a defence to an offence against this section, if the defendant proves that he or she did not have possession or control of the documents or information or did not have knowledge of the relevant documents, books, or records.

225. Failure or refusal to remain at place

- (1) A person commits an offence who:
- (a) fails or refuses to remain at the place that is being searched under section 198(1)(a) until the earlier of the events specified in section 198(4)(a) and (b); or
 - (b) fails or refuses to remain at the place where that person is being searched under section 198(3)(b) until that search is completed.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years, or both.

226. Use of area without licence

- (1) A person who contravenes section 11 commits an offence and is liable on conviction:
- (a) for an individual, to a fine not exceeding \$50,000; and
 - (b) for a body corporate, to a fine not exceeding \$100,000.

227. Failure to comply with conditions of licence

- A person who contravenes a term or condition of or a restriction on a CCA licence commits an offence and is liable on conviction:
- (a) for an individual, to a fine not exceeding \$50,000; and
 - (b) for a body corporate, to a fine not exceeding \$100,000.

Division 3 – Offences in relation to arrival and departure of craft and persons

228. Offences in relation to arrival of craft

- (1) A person commits an offence who:
- (a) being the person-in-charge of a craft, fails to comply with any of the following requirements in section 22(1) (which relates to advice of arrival)—
 - (i) to give advance notice of any prescribed matters; or
 - (ii) to give advance notice and within the prescribed time; or
 - (iii) to proceed to a Customs place; or
 - (iv) to proceed as directed by a Customs officer; or
 - (b) being the person-in-charge of, or the owner of, or a member of the crew of, or a passenger on, a craft—
 - (i) refuses to answer a question put to that person, owner, crew or passenger by a Customs officer under section 23(2)(a) (which relates to a requirement to answer questions) or knowingly gives a false answer to the question; or
 - (ii) fails to comply with a request made under section 23(2)(b); or
 - (c) being the master of a ship, fails to comply with any direction of a Customs officer under section 24(1) or (4) (which relates to the bringing-to of a ship) or contravenes section 24(3); or
 - (d) being the person-in-charge of a craft, contravenes section 25(1) (which relates to the arrival of craft at a nominated Customs place only); or
 - (e) being a member of the crew of, or a passenger on, any craft, contravenes section 25(2); or
 - (f) being a person-in-charge of a craft, contravenes section 26(5) (which relates to craft arriving at a place other than a nominated Customs place); or

- (g) being a member of the crew of, or a passenger on, any craft, contravenes section 26(6) or (7); or
- (h) being the person-in-charge of or the owner of a craft contravenes—
 - (i) section 27(2)(a) (which relates to inward reports); or
 - (ii) a Customs direction given under section 27(2)(b).
- (2) A person convicted of an offence under subsection (1)(a), (c), or (d) is liable:
 - (a) for an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 6 years, or both; and
 - (b) for a body corporate, to a fine not exceeding \$100,000.
- (3) A person convicted of an offence under subsection (1)(b) is liable:
 - (a) for an individual, to a fine not exceeding \$20,000; and
 - (b) for a body corporate, to a fine not exceeding \$50,000.
- (4) A person convicted of an offence under subsection (1)(e), (f), (g), or (h) is liable to a fine not exceeding \$50,000.

229. Offences in relation to inward report

- (1) If:
 - (a) an inward report delivered under section 27 is erroneous, misleading or defective in any material particular; or
 - (b) a document delivered in support of the inward report is not genuine or is erroneous or misleading,—the person-in-charge of the craft and the owner of the craft each commits an offence.
- (2) The person-in-charge or the owner convicted of an offence under subsection (1) is liable:
 - (a) for an individual, to a fine not exceeding \$50,000; and
 - (b) for a body corporate, to a fine not exceeding \$100,000.

230. Offences in relation to departure of craft

- (1) A person commits an offence who:
 - (a) being the person-in-charge of a craft, contravenes section 37 (which relates to clearance of a craft); or
 - (b) being the person-in-charge of a craft—
 - (i) contravenes section 38(a) (which relates to outward reports); or
 - (ii) refuses to answer a question put to that person by a Customs officer under section 38(b) or knowingly gives a false answer to the question; or
 - (iii) fails to produce any documents required by a Customs officer under section 38(c); or
 - (c) being the person-in-charge of or a member of the crew, of a craft, contravenes section 41(which relates to boarding of outward craft); or
 - (d) being the person-in-charge of a craft—
 - (i) fails to comply with a demand made by a Customs officer under section 39 (which relates to the production of a certificate of clearance); or
 - (ii) refuses to answer a question put to that person under that section or knowingly gives a false answer to the question; or
 - (e) being the person-in-charge of a craft, contravenes section 41 (which relates to the departure of craft only from a Customs place).
- (2) A person convicted of an offence under subsection (1) (a), (c), or (e) is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years, or both.

(3) A person convicted of an offence under subsection (1)(b) or (d) is liable to a fine not exceeding \$30,000.

231. Offences in relation to outward report

(1) If:

- (a) an outward report delivered under section 38 is erroneous, misleading or defective in any material particular; or
- (b) any document delivered in support of the report is not genuine or is erroneous or misleading, –

the person-in-charge of and the owner of a craft each commits an offence.

(2) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$30,000; and
- (b) for a body corporate, to a fine not exceeding \$50,000.

232. Failure to comply with requirement to cease using electronic communication device

A person who fails to comply with a requirement imposed on that person under section 34(3) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

233. Defences

It is a defence to an offence against sections 228 to 232 if the defendant proves:

- (a) that, if it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
- (b) that, if it is alleged that anything unlawful was done, the defendant took all reasonable steps to ensure that it was not done.

Division 4 – Other offences

234. Adapting craft for smuggling

(1) If a craft comes to or is found within the Republic having:

- (a) a part or place adapted for the purpose of concealing goods or persons; or
- (b) a hole, pipe, or device adapted for the purpose of concealing goods or persons, –

the person-in-charge and the owner of the craft each commits an offence.

(2) The person-in-charge or owner convicted of an offence under subsection (1) is liable to a fine not exceeding \$100,000.

235. Interference with seals and fastenings

(1) If a fastening, lock, mark or seal that has been placed by a Customs officer on any goods or on a hatchway, opening or other place or device on a craft is, without the authority of a Customs officer, opened, altered, broken, or erased by any person while the craft is within the Republic, the person so acting and the person-in-charge of the craft each commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$50,000.

236. Offences in relation to Customs seals and Customs-approved secure exports schemes

- (1) A person commits an offence who, without lawful justification or reasonable excuse:
 - (a) uses a Customs seal on a package of goods other than under the relevant notice of appointment under section 82; or
 - (b) alters, removes, damages, disposes of, or interferes with a Customs seal used on a package of goods other than under the relevant notice of appointment under section 82; or
 - (c) uses an approved seal or markings of the kind referred to in section 86(1)(b) on a Customs-approved secure package other than under the relevant Customs-approved secure exports scheme.
- (2) This subsection applies to a package if the package is—
 - (a) a package to which a Customs seal has been lawfully used; or
 - (b) a Customs-approved secure package to which a seal or marking of the kind referred to in section 86(1)(b) has been lawfully used.
- (3) A person commits an offence who, without lawful justification or reasonable excuse, tampers or interferes with a package to which subsection (2) applies by adding other goods to the goods in it when it was secured.
- (4) A person convicted of an offence under subsection (1) or (3) is liable to a fine not exceeding:
 - (a) for an individual, \$20,000; and
 - (b) for a body corporate, \$50,000.

237. Interference with cargo

- (1) If at any time after a craft carrying goods from a point outside the Republic arrives within the Republic and before an inward report is made under section 27:
 - (a) any cargo is interfered with; or
 - (b) any alteration is made in the storage of goods carried, so as to facilitate the unloading of any of the goods before the inward report has been made; or
 - (c) any of the goods are starved, removed, destroyed, or thrown overboard, or any package is opened, –the person so acting and the person-in-charge of the craft each commits an offence.
- (2) Subsection (1) does not apply if the act:
 - (a) was authorised by the Chief Collector or a Customs officer; or
 - (b) was required by any statutory or other requirement relating to navigation; or
 - (c) was compelled by accident, stress of weather, or other necessity.
- (3) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$50,000.

238. Unloading goods without authorisation

A person who contravenes section 68 commits an offence and is liable on conviction to a fine not exceeding \$100,000.

239. Offences in relation to manufacture, movements, and storage of goods

- (1) A person commits an offence who:
 - (a) contravenes section 19(1) (which relates to Customs facilities); or
 - (b) contravenes section 71 (which relates to transportation of imported goods); or
 - (c) contravenes section 72 (which relates to the removal of goods from a Customs controlled area); or

- (d) takes goods out of a Customs controlled area or does not any act in relation to goods taken out of a Customs controlled area that contravenes the permission granted by the Chief Collector under section 73 (which relates to the temporary removal of goods from a Customs controlled area); or
- (2) A person who commits an offence against subsection (1) (a) to (d) is liable on conviction:
 - (a) for an individual, to a fine not exceeding \$100,000; and
 - (b) for a body corporate, to a fine not exceeding \$200,000.

240. Interference with goods

- (1) A person commits an offence who, except with the permission of a Customs officer:
 - (a) alters the condition of goods subject to the control of Customs ('the goods'); or
 - (b) interferes with, including by way of addition to or taken away from the goods; or
 - (c) unpacks or repacks the goods; or
 - (d) removes the goods from a place in which a Customs officer has directed that the goods are to be stored.
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding:
 - (a) for an individual, \$100,000; and
 - (b) for a body corporate, \$200,000.

241. Contravention of direction of Chief Collector under section 114

- (1) A purchaser who, except with the consent of the Chief Collector, contravenes a direction given by the Chief Collector under section 114(4)(b), commits an offence and is liable on conviction:
 - (a) for an individual, to a fine not exceeding \$80,000; and
 - (b) for a body corporate, to a fine not exceeding \$150,000.
- (2) A purchaser who, knowingly and without the consent of the Chief Collector, contravenes a direction given by the Chief Collector under section 114(4)(b), commits an offence and is liable on conviction:
 - (a) for an individual, to a fine not exceeding \$80,000; and
 - (b) for a body corporate, to a fine not exceeding \$150,000; and
 - (c) in either case, to an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to the penalties under paragraph (a) or (b).

242. Offences in relation to entries

- (1) A person commits an offence who:
 - (a) fails to make an entry required under this Act; or
 - (b) makes an entry required under this Act that is erroneous or defective in a material particular.
- (2) It is a defence to an offence against subsection (1) if the person proves:
 - (a) that for an offence against subsection (1)(a), the person took all reasonable steps to ensure that an entry was made; or
 - (b) that, for an offence against subsection (1)(b), the person took all reasonable steps to ensure that the entry was not erroneous or defective.
- (3) A person convicted an offence under subsection (1) is liable:
 - (a) for an individual, to a fine not exceeding \$5,000; and

- (b) for a body corporate, to a fine not exceeding \$10,000.
- (4) A person commits an offence who is concerned in the making of an entry that the person knows is erroneous or defective in a material particular.
- (5) A person convicted of an offence under subsection (4) is liable:
 - (a) for an individual, a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or both; and
 - (b) for a body corporate, to a fine not exceeding \$50,000; and
 - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to the penalties imposed under paragraph (a) or (b).

243. Offences in relation to declarations and documents

- (1) A person commits an offence who:
 - (a) makes a declaration or a written statement under this Act that is erroneous in a material particular; or
 - (b) produces or delivers to a Customs officer any document that is not genuine; or
 - (c) produces or delivers to a Customs officer any document that is erroneous in a material particular.
- (2) It is a defence to an offence against subsection (1) if the person proves that the person took all reasonable steps to ensure:
 - (a) that the declaration, statement or document was not erroneous; or
 - (b) for an offence against subsection (1)(b), that the document was genuine.
- (3) A person convicted of an offence under subsection (1) is liable:
 - (a) for an individual, to a fine not exceeding \$3000; and
 - (b) for a body corporate, to a fine not exceeding \$5,000.
- (4) A person commits an offence who:
 - (a) makes a false declaration under this Act, knowing it to be false; or
 - (b) produces or delivers to a Customs officer any document that is not genuine, knowing that it is not genuine; or
 - (c) produces or delivers to a Customs officers any document that is erroneous in any material particular, knowing that it is erroneous.
- (5) A person convicted of an offence under subsection (4) is liable:
 - (a) for an individual, to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 6 months, or both;
 - (b) for a body corporate, to a fine not exceeding \$50,000; and
 - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to the penalties under paragraph (a) or (b).

244. Offences in relation to records

- (1) A person who fails to keep records that are required to be kept by section 111 commits an offence and is liable:
 - (a) on first conviction, to a fine not exceeding \$5,000; or
 - (b) on second conviction, to a fine not exceeding \$10,000; or
 - (c) on any subsequent conviction, to a fine not exceeding \$15,000.
- (2) A person commits an offence who:

- (a) fails without reasonable excuse to make available to Customs, on the request of a Customs officer, the records that are required to be kept by section 111; or
 - (b) fails, when requested by a Customs officer, to operate any mechanical, or electronic device on which any record or information is stored for the purpose of enabling Customs officer to obtain e record or information.
- (4) For an offence under subsection (3), the person is liable:
- (a) on first conviction, to a fine not exceeding \$5,000; or
 - (b) on the second conviction, to a fine not exceeding \$10,000; or
 - (c) on any subsequent conviction, to a fine not exceeding \$15,000.
- (5) A person commits an offence who, with intent to defeat the purposes of this Act, destroys, alters, or conceals any book, document, or record required to be kept under this Act, or sends or attempts to send out of the Republic the book, document, or record.
- (6) A person convicted of an offence under subsection (5) is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 4 years, or both.
- (7) For an offence under subsection (5), if it is proved that the offender has destroyed, altered, or concealed any book, document, or record, or has sent or attempted to send, out of the Republic, the book, document or record, it is presumed, in any absence of evidence to the contrary, that in so doing that offender intended to defeat the purposes of this Act.

245. Offences relating to failure to give Customs access to information

- (1) A person who fails, without reasonable excuse, to give the Customs access to information under section 46, 47 or 112 commits an offence and is liable on conviction:
- (a) for individual, to a fine not exceeding \$10,000; and
 - (b) for a body corporate, to a fine not exceeding \$15,000.
- (2) A person who fails, without reasonable excuse, to give the Customs access to information under any of sections 46, 47, and 112 in the prescribed form and manner commits an offence and is liable on conviction:
- (a) for an individual, to a fine not exceeding \$10,000; and
 - (b) for a body corporate, to a fine not exceeding \$15,000.

246. Offence relating to disclosing whether required to give Customs access to information

- (1) This section applies to a person if the person is a person concerned in the movement of goods, persons, or craft (as defined in section 43).
- (2) The person must not disclose to another person who is not the Chief Collector, a Customs officer, or an agent or employee of the person:
- (a) whether the person is a person to whom section 46 or 47 applies; or
 - (b) whether the person has been exempted from complying with obligations under that section.
- (3) A person who, without reasonable excuse, contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding:
- (a) for an individual, \$15,000; and
 - (b) for a body corporate, \$25,000.

247. Possession of incomplete documents

- (1) A person commits an offence who, without lawful authority or excuse, has in his or her possession or brings into the Republic any uncompleted document or form capable of

being used for any purpose under this Act if the document is signed or certified or bears any mark or inscription to indicate that it is correct or authentic.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$5,000.

248. Offences in relation to use of goods

(1) If under any provision of this Act or of the Customs Tariff Act 2014 goods are, if entered for a particular purpose or under any condition imposed by the Minister or any other Minister, exempt from duty or liable to a lower rate of duty than if entered other than for that purpose or under that condition, and any goods have been entered under that provision, a person commits an offence who knowingly:

- (a) uses or deals with those goods for a purpose other than that for which they have been so entered; or
- (b) fails to comply with a condition imposed, by the Minister or the other Minister, on the goods so entered.

(2) A person convicted of an offence under subsection (1) is liable to:

- (a) a fine not exceeding an amount equal to 3 times the amount of the duty that would have been payable if the goods had been entered otherwise than under the provision under which they were entered; or
- (b) a fine not exceeding \$5,000,—

whichever sum is the greater.

249. Provisions relating to offences against sections 242 to 248

For the purposes of this Act:

- (a) a declaration, invoice, certificate, written statement, or other document required or authorised by or under this Act to be made or produced by a person making an entry is treated to form part of that entry; and
- (b) an amendment of an entry is treated to form part of that entry, but an amendment to an entry does not relieve a person from liability to the imposition of a penalty or liability to seizure of goods or criminal liability incurred on the entry before its amendment.

250. Offences in relation to importation or exportation of prohibited goods

(1) A person commits an offence who:

- (a) imports into the Republic or unships or lands in the Republic goods the importation of which is prohibited under section 91; or
- (b) exports, or transports with intent to export, goods from the Republic the exportation of which is prohibited under section 92; or
- (c) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment, or landing of goods to which paragraph (a) or (b) applies; or
- (d) without lawful justification or excuse, removes from a Customs controlled area imported goods the importation of which is prohibited under section 91; or
- (e) is knowingly concerned or conspires, in the removal from a Customs controlled area of goods, the importation of which is prohibited under section 91; or
- (f) commits a breach of, or fails to comply with, a term or condition on or subject to which a licence, permit, or consent has been granted, under an order made under section 91(3) or 92(3); or

- (g) is knowingly concerned in a breach or failure to comply to which paragraph (f) applies.
- (2) A person convicted of an offence under subsection (1) (c), (e), or (g) is liable:
 - (a) for an individual, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 10 years, or both; and
 - (b) for a body corporate, to a fine not exceeding \$500,000; and
 - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to the penalties imposed under paragraph (a) or (b).
- (3) A person convicted of an offence under subsection (1) (a), (b), (d), or (f) is liable:
 - (a) for an individual, to a fine not exceeding \$300,000; and
 - (b) for a body corporate, to a fine not exceeding \$500,000.
- (4) It is not a defence to an offence under subsection (3) that the defendant had no knowledge or no reasonable cause to believe that the goods for which the offence was committed were prohibited imports or prohibited exports.

251. Offences in relation to exportation of goods

- (1) A person commits an offence who:
 - (a) contravenes section 74(1) or (5) (which relates to entries required); or
 - (b) fails to comply with a request made under section 74(2)(b); or
 - (c) fails or is knowingly concerned in any failure, to comply with section 79 (which requires goods for export to be dealt with according to the entry); or
 - (d) contravenes section 80 (which relates to the requirement for goods for export not to be landed); or
 - (e) knowingly, contravenes section 131(3) (which relates to drawback on duty on certain goods).
- (2) A person convicted of an offence under subsection (1) (a), (b), (c), or (d) is liable to a fine not exceeding 200 00.
- (3) A person convicted of an offence under subsection (1)(e) is liable:
 - (a) for an individual, to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 2 years, or both; and
 - (b) for a body corporate, to a fine not exceeding \$50,000; and
 - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).

252. Defrauding the revenue of Customs

- (1) A person commits an offence who does any act or omits to do any act for the purpose of:
 - (a) evading, or enabling any other person to evade, payment of duty or full duty on goods; or
 - (b) obtaining or enabling any other person to obtain, money by way of drawback or a refund of duty on goods to which that person or that other person is not entitled under this Act; or
 - (c) conspiring with any other person (whether or not that other person is in the Republic) to defraud the revenue of Customs on goods; or
 - (d) defrauding in any other manner the revenue of Customs on goods.
- (2) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 5 years, or both; and
- (b) for a body corporate, to a fine not exceeding \$500,000; and
- (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).

253. Possession or custody of uncustomed goods or prohibited imports

(1) A person commits an offence who knowingly and without lawful justification has in his or her possession or custody goods that the person knows are uncustomed goods or prohibited imports.

(2) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 2 years, or both; and
- (b) for a body corporate, to a fine not exceeding \$500,000; and
- (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).

254. Purchase, sale, exchange, etc., of uncustomed goods or prohibited imports

(1) A person commits an offence who knowingly and without lawful justification purchases, sells, exchanges, or otherwise acquires or disposes of, goods that the person knows are uncustomed goods or prohibited imports.

(2) A person convicted of an offence subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 7 years, or both; and
- (b) for a body corporate, to a fine not exceeding \$500,000; and
- (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).

255. Possession or control of concealed goods

(1) A person commits an offence who knowingly conceals any goods that the person knows are dutiable or prohibited goods.

(2) A person convicted of an offence under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 7 years, or both; and
- (b) for a body corporate, to a fine not exceeding \$500,000; and
- (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).

256. Offences in relation to seized goods

(1) A person commits an offence who:

- (a) having custody of goods under section 269, contravenes a requirement under section 269(8); or

- (b) without the permission of the Chief Collector, takes or carries away or converts to the person's own use goods, including a vehicle or craft, that have been seized as forfeited.
- (2) A person convicted of an offence:
 - (a) under subsection (1)(a) is liable to a fine not exceeding \$10,000; and
 - (b) under subsection (1)(b) is liable to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates or to imprisonment for a term not exceeding 2 years, or both.

257. Offences in relation to certain detained goods

- (1) A person commits an offence who:
 - (a) having custody of goods under section 196(1), breaches a requirement of or imposed under section 196(2) or (3); or
 - (b) without the permission of the Chief Collector, takes or carries away or converts to his or her own use goods to which section 196(2) and (3) applies.
- (2) A person convicted of an offence:
 - (a) under subsection (1)(a), is liable to a fine not exceeding \$5,000; and
 - (b) under subsection (1)(b), is liable to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates or to imprisonment for a term not exceeding 12 months, or both.

258. Offences in relation to Appeal to the Minister

- (1) A person commits an offence who, with intent to deceive, makes any false or misleading statement or any material omission in any information given to the Minister for the purposes of this Act.
- (2) A person commits an offence who, after being summoned to attend to give evidence before the Minister or to produce to it any papers, documents, records or things, without sufficient cause:
 - (a) fails to attend in accordance with the summons; or
 - (b) refuses to be sworn or to give evidence or having been sworn refuses to answer any question that the person is lawfully required by the Minister to answer concerning the subject of the proceedings; or
 - (c) fails to produce any paper, document, record, or thing.
- (3) A person summoned to attend proceedings before the Minister may not be convicted of an offence under subsection (2) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed under section 314(2).
- (4) A person commits an offence who:
 - (a) wilfully obstructs or hinders the Minister or any person authorised by the Minister in any inspection or examination of papers, documents, records, or things under section 310(1)(a); or
 - (b) without sufficient cause, fails to comply with any requirement of the Minister or any person authorised by the Minister made under section 310(1)(b); or
 - (c) without sufficient cause, contravenes any order made under section 310(3) or a term or condition of the order.
- (5) A person convicted of an offence:
 - (a) under subsection (1) is liable—

- (i) for an individual, to a fine not exceeding \$30,000; and
 - (ii) for a body corporate, to a fine not exceeding \$50,000; and
- (b) under subsection (2) or (4) is liable to a fine not exceeding \$10,000.

259. Unauthorised disclosure of information

(1) A person who is or was an employee of the Republic Customs Service may not disclose or use any information gained by or conveyed to the person through the person's connection with the Republic Customs Service except in the course of the person's official duties or as authorised by the Chief Collector or the Minister.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both.

260. Misconduct by officers of Customs

(1) An officer of Customs must not accept or agree or offer to accept any fee, perquisite, gratuity, or reward, whether pecuniary or not, from any person on account of anything done or omitted by the officer in carrying out the function, duties or powers of office, except for those that the officer receives with the permission of the Minister or Chief Collector.

(2) An officer who contravenes subsection (1) commits a misconduct in office, and may be dismissed or dealt with under the Public Service Act 1998.

Division 4 – Other provisions relating to offences

261. Liability of officers of corporations

(1) In this section, 'body corporate' includes a company, trust, partnership or other enterprise.

(2) If a body corporate commits an offence under this Act, any director, manager, secretary, officer or agent of the body corporate and a person purporting to act in that capacity who participated in, directed, authorised, acquiesced in, or assented to the act or omission constituting the offence also commits the same offence.

(3) An individual convicted of an offence under this Act pursuant to subsection (2) is liable on conviction to the penalty prescribed by the section creating the offence in respect of any individual who is convicted of the offence or, if no penalty is specified for an individual, to the penalty specified for the offence.

(4) A person may be convicted of the offence, even though the body corporate has not itself been charged with, or conviction of, the offence.

262. Liability of principal and agent

(1) A declaration made or other act done by an agent, whether or not, the agent is in the Republic, in the course of his or her agency in relation to the report, entry or clearance of any craft or goods or any other matter under this Act is taken also to have been made or done by the agent's principal, and the principal is liable accordingly to the penalties imposed by this Act.

(2) For the purposes of this section, the knowledge or intent of the agent is imputed to the principal in addition to the principal's own knowledge or intent.

(3) For the purposes of this section:

- (a) an employee of the agent; or
- (b) a person performing a function of or for the agent; or

(c) a person acting under the instruction of the agent, –
is treated also to be the agent of the principal.

(4) If a person acts or purports to act as the agent of any other person in relation to the report, entry, or clearance of any craft, or goods or any other matter under this Act, the person is liable to the same penalties as if the person were the principal for whom the person so acts or purports to act.

263. Attempts

An attempt to commit an offence against this Act is an offence punishable in the same manner and gives rise to the same cause for seizure as if the offence attempted had been committed.

264. Laying of information

(1) Subject to subsection (2), an information laid under the Criminal Procedures Act 1972 for an offence against this Act may be laid by:

- (a) the Chief Collector; or
- (b) any Customs officer or other employee of Customs nominated by the Chief Collector.

(2) Despite anything in the Criminal Procedures Act 1972, any information for an offence against this Act may be laid at any time within 7 years after the date of the offence.

265. Court may order payment of money in respect of duty – (1) If:

- (a) a person is convicted of an offence against section 211, 212, 223, or 224; and
- (b) the Court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of any evidence that would support a claim for duty under this Act,–

the Court may, in addition to any other penalty, order the defendant to pay to the Republic any further sum in respect of that claim as it thinks fit.

(2) An order for payment under this section may be enforced in the same manner as a fine.

(3) The recovery of any amount under this section in respect of a claim does not extinguish the claim for duty, but must be taken into account in determining any amount to be awarded in any subsequent proceedings that may be taken on the claim for duty.

266. Power of Chief Collector to deal with minor offences

(1) This section applies to the following offences:

- (a) an offence against this Act that is committed—
 - (i) in relation to goods; and
 - (ii) in circumstances that the Chief Collector is satisfied would not amount to more than minor offending;
- (b) an offence against this Act that is not punishable by imprisonment.

(2) At any time before an information is laid against a person for an offence to which this section applies, the Chief Collector may accept from the person:

- (a) a written admission that the person committed the offence; and
- (b) a request that the offence be dealt with under this section by the Chief Collector; and
- (c) payment of an amount, not exceeding the limit specified in subsection (4) that the Chief Collector considers just in the circumstances of the case in full satisfaction

of any fine or other penalty to which the person would otherwise be liable under this Act.

(3) For the purposes of subsection (2), the Chief Collector may indicate to the person at the time of the commission of the alleged offence or as soon as practicable after that whether the Chief Collector considers that the offence is an offence to which this section applies.

(4) The amount referred to in subsection (2)(c) must not exceed one-third of the maximum total monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

(5) If the Chief Collector accepts payment of an amount under subsection (2)(c), the offender is not liable to be prosecuted for the offence in which the payment was made.

(6) If the Chief Collector declines to exercise the power under subsection (2), the admission in writing made by the offender is not admissible as evidence in any prosecution for that offence.

PART 15 - FORFEITURE AND SEIZURE

Division 1 – Forfeiture

267. Application

This Part applies to all forfeitures that arise under this Act.

268. Goods forfeited

(1) The following goods are forfeited to the Republic:

- (a) goods for which an offence has been committed under—
 - (i) section 215 (which relates to counterfeit seals or marks);
 - (ii) section 242 (which relates to offences in relation to entries);
 - (iii) section 243 (which relates to offences in relation to declarations and documents);
 - (iv) section 247 (which relates to possession of incomplete documents);
 - (v) section 250 (which relates to offences in relation to importation or exportation of prohibited goods);
 - (vi) section 251 (which relates to offences in relation to exportation of goods);
 - (vii) section 252 (which relates to defrauding the revenue of Customs);
 - (viii) section 253 (which relates to possession or custody of uncustomed goods or prohibited imports);
 - (ix) section 254 (which relates to purchase, sale, exchange of uncustomed goods or prohibited imports);
 - (x) section 255 (which relates to possession or control of concealed goods);
- (b) goods dealt with in contravention of section 66, 68, 71, or 72;
- (c) dutiable or prohibited goods found in the possession of any person who, when questioned under section 160 or 162, denied or failed to disclose the possession of those goods;
- (d) dutiable or prohibited goods found in the course of a search under section 159 or seized under section 173(1) or (2)(b);
- (e) dangerous items seized under section 173;

- (f) goods for which an erroneous statement, declaration, certificate or claim as to the country of which the goods are the produce or manufacture has been made or produced to any Customs officer;
- (g) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device that is lawfully in any place;
- (h) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device after arrival in any Customs place from a point outside the Republic, not being goods specified or referred to in the inward report or baggage belonging to the crew or passengers and not being accounted for to the satisfaction of a Customs officer;
- (i) dutiable or prohibited goods found concealed in or on any craft, vehicle, bulk cargo container, pallet or a similar device, or any other thing;
- (j) goods in a package where those goods are not fully accounted for in the entry or declaration relating to that package;
- (k) dutiable goods or prohibited goods found so packed as to be likely to deceive Customs officers;
- (l) uncustomed goods that are found in any place;
- (m) goods imported that have been acquired in another country, whether by the importer or some other person, by an act which, if done in the Republic would have amounted to a crime involving dishonesty under the Criminal Code 1899;
- (n) goods exported, or for which an attempt to export has been made, that have been acquired in the Republic, whether by the exporter or some other person, by an act that amounts to a crime involving dishonesty under the Criminal Code 1899;
- (o) goods unlawfully exported or for which an attempt to so export has been made;
- (p) goods that have been unlawfully imported into the Republic.

(2) Despite section 81, for the purposes of subsection (1)(o), goods; the exportation of which is prohibited under this Act are treated to have been exported as soon as they are placed in or on any craft for exportation.

(3) The forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation, or exportation.

(4) Despite subsection (3), forfeiture of goods extends to the forfeiture of a bulk cargo container, pallet or a similar device where that bulk cargo container, pallet or other similar device has been adapted for the purpose of concealing goods.

(5) A craft, vehicle, or any other thing, including any machinery or equipment on or in the craft or vehicle or thing, or any animal that is being or has been used for the carriage, handling, deposit or concealment of any goods referred to in subsection (1), whether at or after the time of any alleged offence in relation to those goods is also forfeited to the Republic.

(6) Without limiting subsection (5), a craft is also forfeited to the Republic if:

- (a) the craft is one for which an offence under section 228(1)(a) or (d) is committed; and
- (b) that offence was committed to facilitate non-compliance with a requirement in any of sections 28 to 30 by a person or persons who arrived in the Republic having been brought (in that craft or in any other craft) from a point outside the Republic.

269. Procedure for seizure

(1) A Customs officer or police officer may seize any forfeited goods or any goods that the officer has reasonable cause to suspect are forfeited.

(2) Goods may be seized as forfeited wherever the goods are found within the Republic.

(3) Forfeited goods, other than prohibited goods, may be seized at any time within 2 years after the forfeiture has arisen.

(4) Goods that are forfeited because they are prohibited goods may be seized at any time after the forfeiture has arisen.

(5) A Customs officer or police officer may use force as is reasonably necessary for effecting the seizure and securing the goods.

(6) Except as provided in subsections (7) and (8), a Customs officer must direct that all goods seized to be taken to a place of security to be detained.

(7) If goods including a craft, vehicle or animal, have been seized under this section, a Customs officer may leave those goods in the custody of either:

(a) the person from whom the goods have been seized; or

(b) any other person, authorised by a Customs officer, who consents to having custody of the goods.

(8) A person who has the custody of goods under subsection (7) must:

(a) hold the goods in safekeeping, without charge to the Republic and under any reasonable conditions that may be imposed by a Customs officer, until a final decision is made as to whether or not the goods are to remain forfeited; and

(b) make the goods available to a Customs officer on request; and

(c) not alter or dispose of, or remove the goods from the Republic unless the person is authorised to do so by a Customs officer; and

(d) return the goods on demand to the custody of Customs.

270. Notice of seizure

(1) When any goods have been seized under section 269, Customs must, as soon as is reasonably practicable, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form, to:

(a) a person known or believed to have an interest in the goods; or

(b) the person's agent in the Republic if the person is overseas.

(2) A seizure is not invalidated or illegal by reason of a failure to give the seizure notice if reasonable steps were taken to give the notice.

271. Forfeiture to relate back

If, under section 269, goods are forfeited and the goods are seized, the forfeiture related back to the date of the act or event from which the forfeiture arose.

272. Delivery of goods seized on deposit of value

(1) If any goods have been seized as forfeited, the Chief Collector may, at any time before their condemnation, deliver the goods to the owner or the person from whom they were seized, on the deposit with Customs of a cash sum equal:

(a) for imported goods, to the Customs value of the goods; or

(b) for goods manufactured in a Customs controlled area, to the Customs value of the goods determined under Schedule 2, –

together with any duty to which the goods may be liable as determined by the Chief Collector.

(2) The money deposited is treated to be substituted for goods seized; and all the provisions of this Part (so far as they are applicable) extend and apply to the money accordingly.

273. Sale of certain seized goods

(1) If:

- (a) a living creature; or
- (b) a thing that, in the opinion of the Chief Collector, is of a perishable nature; or
- (c) a thing that, in the opinion of the Chief Collector, is likely to deteriorate or diminish in value by keeping; or
- (d) a thing that, in the opinion of the Chief Collector, it is desirable to sell,—

has been seized as forfeited, the Chief Collector may sell the thing seized before its condemnation.

(2) The net proceeds of sale are treated to be substituted for the thing sold; and all the provisions of this Part (so far as they are applicable) extend and apply to the proceeds accordingly.

274. Mode of exercising of sale

If the Chief Collector is empowered by this Act to sell any goods, the following provisions apply, except so far as different provision is made by this Act in any particular case:

- (a) the goods must be sold by auction or tender, after prescribed public notice, or if no prescribed notice is prescribed, after reasonable public notice;
- (b) the price is to be paid in cash on the acceptance of the bidding or tender;
- (c) no bidding or tender is necessarily accepted, and the goods may be re-offered until sold at a price satisfactory to the Chief Collector;
- (d) the Chief Collector or any Customs officer (authorised by the Chief Collector) may act as an auctioneer in the sale of goods without being licensed in that behalf;
- (e) the proceeds of the sale are to be paid in the following order of priority—
 - (i) the expenses of the sale;
 - (ii) the duty, as if the goods had been entered for home consumption;
 - (iii) the warehouse Customs controlled area charges and any other charges;
 - (iv) any freight due on the goods, if written notice claiming such freight has been given to the Chief Collector; and
 - (v) any balance, to the person entitled to it.

Division 2 – Appeals against seizure

275. Application for review of seizure

(1) A person who has an interest in goods that have been seized under section 269 may, within the time specified in subsection (2), apply to the Chief Collector to review the seizure.

(2) The time is:

- (a) 20 working days after the date on which the notice of seizure is given to the applicant; or
- (b) any further time allowed by the Chief Collector if satisfied that the applicant did not receive the notice of seizure or that a further period is required in the interests of justice.

(3) An application under this section may be made on either or both of the following grounds:

- (a) that there was no legal basis for the seizure of the goods;
 - (b) that the applicant should, in all the circumstances, be granted relief.
- (4) The application must:
- (a) be in writing; and
 - (b) state the ground or grounds on which the application is made; and
 - (c) give an address at which the applicant wishes to receive correspondence relating to the application.

276. Conduct of review

- (1) When an application is received under section 275, the Chief Collector must conduct the review on the papers, unless the Chief Collector directs other means of conducting the review.
- (2) In undertaking the review, the Chief Collector:
- (a) must consider the application and any written submissions made by the applicant; and
 - (b) may consider any statement, document, information, or matter that in the Chief Collector's opinion may assist the Chief Collector to deal effectively with the subject of the review, whether or not it would be admissible in a court of law.
- (3) The Chief Collector may ask the applicant for supplementary information and have regard to that supplementary information.
- (4) The applicant must establish, on the balance of probabilities, that the applicant has an interest in the seized goods and acquired that interest in good faith.

277. Decision on review

- (1) The Chief Collector may:
- (a) dismiss the application for review; or
 - (b) if satisfied that there was no legal basis for the seizure of all or any of the goods, disallow the seizure (in whole or in part) and direct that the goods be given (in whole or in part) to—
 - (i) the person from whom the goods were seized; or
 - (ii) if the goods were not seized from a particular person, the person who, in the opinion of the Chief Collector, is entitled to possess the goods; or
 - (c) grant relief by making any of the determinations described in section 279 (either unconditionally or subject to any conditions described in that section), if satisfied that it is equitable to do so, having regard to the matters specified in section 278.
- (2) The Chief Collector must decide the application within 20 working days after the day on which the Chief Collector receives the application.
- (3) If, in the opinion of the Chief Collector, the circumstances of the case do not permit a decision to be made within the period specified in subsection (2), the Chief Collector may extend that period by a further period that is reasonable in the circumstances.
- (4) As soon as practicable after deciding the application, the Chief Collector must give written notice of the decision to:
- (a) the applicant; and
 - (b) any other person on whom the notice of seizure was given under section 270; and
 - (c) any person, other than a person referred to in paragraph (b), who claims an interest in the goods.
- (5) If the application for review is dismissed, the written notice must contain the reasons for the dismissal.

(6) The written notice must state that a person who is dissatisfied with the decision of the Chief Collector has a right to appeal to the Minister against the decision.

278. Matters concerning grant of relief

When deciding whether or not to grant relief, the Chief Collector may take into account, without limitation, any or more of the following matters:

- (a) the seriousness and nature of any act or omission giving rise to the seizure;
- (b) whether or not the person who is alleged to have done any act or omitted to do any act giving rise to the seizure has previously engaged in any similar conduct;
- (c) whether the seizure has arisen from, or is related to, a deliberate breach of the law;
- (d) the nature, quality, quantity, and estimated value of the seized goods;
- (e) the nature and extent of any loss or damage suffered by any person as a consequence of the seizure;
- (f) whether or not granting relief would undermine the purpose or objective of any import or export prohibition or restriction imposed by this Act or any other enactment;
- (g) the effect of any other action that has been taken or is proposed to be taken in respect of any offending related to the seizure.

279. Determinations where relief granted

(1) If the Chief Collector grants relief under section 277(1)(c), the Chief Collector may, subject to conditions, determine:

- (a) that the goods be given to the applicant or to another person who, but for the seizure, is entitled to their possession; or
- (b) that the goods be sold and that 1 or more of the following persons be paid any part of the proceeds approved by the Chief Collector—
 - (i) the applicant;
 - (ii) any other person who has an interest in the goods;
 - (iii) the Republic.

(2) Without limiting subsection (1), the Chief Collector may impose any of the following conditions:

- (a) that there be paid to the Customs for the seized goods a sum equal to the whole or any part of 1 or more of the following—
 - (i) any costs or expenses incurred by the Customs in transporting, storing, or disposing of the goods (including returning or giving the goods to any person), or any incidental costs or expenses relating to their detention;
 - (ii) any duty not already paid;
 - (iii) any duty already refunded;
 - (iv) the value of the detained goods, as determined by the Chief Collector;
- (b) that the goods be modified, in a manner directed by the Chief Collector, so as to render them inoperable for unlawful purposes;
- (c) that the costs or expenses incurred by the Customs in modifying the goods under a direction under paragraph (b) be paid to the Customs.

(3) The Chief Collector must not make a determination described in this section if he or she is of the opinion that all or any of the goods may be required to be produced in evidence in any criminal proceedings.

280. Condemnation of seized goods

(1) If the Chief Collector dismisses an application for review, the dismissal is treated to be an order for condemnation of the goods to the Republic.

(2) The order for condemnation of the goods takes effect on the close of the 20th working day after the Chief Collector gives his or her decision on the application unless an appeal against the decision on the application is made to the Minister.

(3) If no application for review is made within the time specified by section 275(2), or if the application is discontinued, the seized goods are condemned to the Republic.

Division 3 – Appeal from review

281. Appeal to Minister

(1) A person who is dissatisfied with a decision of the Chief Collector made under section 277 (including any determination or condition described in section 279) may appeal to the Minister against the decision or any part of the decision.

(2) The appeal must be brought within 20 working days after the date on which notice of the decision under section 277 is given.

282. Condemnation of goods subject to appeal

The goods that are the subject of an appeal under section 281 are condemned to Customs if:

- (a) the appeal is discontinued; or
- (b) the decision of the Minister neither—
 - (i) disallows the seizure of the goods under section 277(1)(b); nor
 - (ii) grants relief under section 277(1)(c).

Division 4 – General provisions as to forfeiture

283. Condemnation of seized goods on conviction

(1) Subject to subsection (2), if this Act provides that on the commission of an offence any goods are forfeited, the conviction of a person for that offence has effect as a condemnation, without suit or judgment, of any goods that have been seized under this Act and:

- (a) for which the offence was committed; or
- (b) which were forfeited under section 268(3), (4), or (5).

(2) If the Court imposes a sentence on a person on the conviction of that person for an offence to which subsection (1) applies, the Court may:

- (a) order the restoration of the goods forfeited to the person from whom the goods were seized and, if the restoration order is made, the conviction does not have effect as a condemnation of those goods; and
- (b) if required, impose conditions on the restoration order.

(3) Subsection (2) does not apply if the goods have, before the conviction, been sold, or restored to the person from whom they were seized, or otherwise disposed of by the Chief Collector under any other provision of this Act.

284. Disposal of forfeited goods

(1) The Republic has the property in forfeited goods or in a deposit made under section 272 or in the proceeds of sale under section 273.

(2) The Chief Collector may direct that the forfeited goods be sold, used, destroyed, or disposed of after their condemnation.

285. Application of forfeiture provisions

The provisions of this Act on forfeiture of goods extend and apply to a craft, vehicle, or other thing forfeited under this Act.

PART 16 - EVIDENCE

286. Burden of proof

(1) In any proceedings under this Act instituted by or on behalf of or against the Republic, an allegation made on behalf of the Republic in a statement of claim, statement of defence, plea or information, is presumed to be true unless the contrary is proved, if the allegation relates to:

- (a) the identity or nature of any goods; or
- (b) the value of any goods for duty; or
- (c) the country or time of exportation of any goods; or
- (d) the fact or time of the importation of any goods; or
- (e) the place of manufacture, production or origin of any goods; or
- (f) the payment of any duty on goods.

(2) The presumption in subsection (1) is not excluded by the fact that evidence is produced on behalf of the Republic in support of the allegation.

(3) This section extends and apply to proceedings in which the existence of an intent to defraud the revenue of the Republic is in issue.

(4) Despite subsections (1) to (3), in any proceedings for an offence against this Act if it is alleged that the defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond reasonable doubt.

287. Documents made overseas

(2) In any proceedings under this Act, the Court may admit in evidence as proof of any fact in issue a document made in another country whether or not the document is legally admissible as evidence in other proceedings.

(2) Subsection (1) does not apply to an offence under section 218(1), 219(1), 244(5) or 250(1)(c).

288. General admissibility of hearsay

(1) A hearsay statement is admissible in any proceeding under this Act if:

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) either—
 - (i) the maker of the statement is unavailable as a witness; or
 - (ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) This section is subject to Part II of the Civil Evidence Ordinance 1972.

289. Admissibility of hearsay statements contained in business records

(1) A hearsay statement contained in a business record is admissible in a proceeding under this Act if:

- (a) the person who supplied the information used for the composition of the record is unavailable as a witness; or
- (b) the Judge considers no useful purpose would be served by requiring that person to be a witness as that person cannot reasonably be expected (having regard to the time that has elapsed since the person supplied the information and to all the other circumstances of the case) to recollect the matters dealt with in the information the person supplied; or
- (c) the Judge considers that undue expense or delay would be caused if that person were required to be a witness.

(2) This section is subject to Part II of the Evidence Ordinance 1972.

290. Definition

(1) In this Part:

‘business’:

- (a) means any business, profession, trade, manufacture, occupation, or calling of any kind; and
- (b) includes the activities of any government Department or an agency or other office of the State, a village or district authority, public body, body corporate, organisation, or society;

‘business record’ means a document:

- (a) that is made—
 - (i) to comply with a duty; or
 - (ii) in the course of a business, and as a record or part of a record of that business; and
- (b) that is made from information supplied directly or indirectly by a person who had, or may reasonably be supposed by the court to have had, personal knowledge of the matters dealt with in the information the person supplied;

‘circumstances’, in relation to a statement by a person who is not a witness, includes:

- (a) the nature of the statement; and
- (b) the contents of the statement; and
- (c) the circumstances that relate to the making of the statement; and
- (d) any circumstances that relate to the veracity of the person; and
- (e) any circumstances that relate to the accuracy of the observation of the person;

‘duty’ includes any duty imposed by law or arising under any contract, and any duty recognised in carrying on any business practice.

(2) In this Part, a person is ‘unavailable as a witness’ in a proceeding if the person:

- (a) is dead; or
- (b) is in another country and it is not reasonably practicable for the person to be a witness; or
- (c) is unfit to be a witness because of the person’s age or physical or mental condition; or
- (d) cannot with reasonable diligence be identified or found; or
- (e) is not compellable to give evidence.

(3) Subsection (2) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

291. Admissibility of expert opinion evidence

(1) An opinion by an expert that is part of expert evidence offered in a proceeding under this Act is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible simply because it is about:

- (a) an ultimate issue to be determined in the proceeding; or
- (b) a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person's state of mind:

- (a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and
- (b) neither the hearsay rule nor the previous consistent statements rule applies to evidence of the statement made by the person.

292. Proof of forms made under section 317

(1) The production of an approved form made under section 317(1) is, in any court and in all proceedings, sufficient evidence, until the contrary is proved, of the matters in the form.

(2) The production of a copy of the public notice in which the an approved form was notified, is, in all courts and in all proceedings, sufficient evidence, until the contrary is proved, of the existence and notification of the form.

293. Customs record of computer transmission admissible evidence

In any proceedings under this Act, a computer printout of an extract of a record kept by Customs under section 151, certified by or on behalf of the Chief Collector under the seal of Customs as a true copy, is in all Courts admissible as evidence of the electronic message received by or sent to Customs set out in that printout, unless the contrary is proved.

294. Presumption of authenticity of documents

All documents purporting to be signed by or on behalf of the Chief Collector or to be sealed with the seal of Customs, are, in all courts and in all proceedings under this Act, and any other enactment, treated to have been signed or sealed with the due authority, unless the contrary is proved.

PART 17 - MISCELLANEOUS

Division 1 – Customs brokers

295. Grant or refusal of licence

- (1) A person may apply to the Chief Collector to be licensed as a Customs broker.
- (2) The application must be in the prescribed form and accompanied by the prescribed fee.
- (3) The Chief Collector may:
 - (a) grant the licence, subject to conditions; or
 - (b) refuse the application, if the Chief Collector is satisfied that the applicant is not capable of complying with any licence conditions.
- (4) The Chief Collector must, in writing, notify the applicant of the decision, including the reason for refusal of the application if the application is refused.

296. Revocation or suspension of licence

- (1) The Chief Collector may suspend or revoke the licence of a Customs broker if the Chief Collector is satisfied that the Customs broker has:
 - (a) contravened a term, condition or restriction imposed on the licence; or
 - (b) ceased to operate as an agent on behalf of owners; or
 - (c) been convicted of an offence under this Act; or
 - (d) is no longer a fit and proper person to hold a licence; or
 - (e) failed to pay the prescribed annual fee for the licence; or
 - (f) made entries materially incorrect as defined under section 142(2).
- (2) The Chief Collector must, before deciding to suspend or revoke the licence, give a written notice to the Customs broker to show cause (within the time specified in the notice) as to why the licence should not be suspended or revoked
- (3) The Chief Collector must, in writing, notify the Customs broker of the decision, including the reasons for suspension or revocation of the licence.

297. Authorised agents

- (1) The owner of any goods (whether the goods are of a personal private nature or are goods imported for commercial purposes) must comply with this Act by or through an authorised agent who is a licensed Customs broker.
- (2) A Customs broker must obtain from the owner of the goods, a written document authorising that broker to act (as the authorised agent of the owner) on behalf of the owner of the goods.
- (3) The authority granted by an owner under subsection (2), may be for a particular shipment or shipments or for a period not exceeding 5 years.

298. Production of authority

- (1) If a person:
 - (a) is authorised by the owner to act as the authorised agent under section 297(2); or
 - (b) represents or passes him or herself, or acts as a broker, –the person is treated to be the owner of the goods and personally liable for any duties chargeable or any penalties recoverable under this Act in the same manner and to the same extent as if the person were the owner.
- (2) Subsection (1) does not relieve the owner of the goods from personal liability.

299. Liability of the owner for actions of a broker

A declaration authorised by this Act that is made by a broker, is treated to be made with the knowledge and consent of the owner, so that in a criminal proceeding on a declaration made by the broker, the owner is liable as if the owner had made the declaration.

300. Unlawfully acting as Customs broker

- (1) A person commits an offence:
 - (a) if the person is a Customs broker or a broker's employee or a person acting under the instructions of a Customs broker, who acts as the agent of the owner of the goods without written authorisation of the owner; or
 - (b) other than a Customs broker, who assumes or uses in connection with a trade, business, calling or profession that would give reasonable cause to believe that it is operated under a Customs broker's licence.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 100 00.

Division 3 – General provisions

301. Payments by Chief Collector out of public money

Subject to any prescribed limitations, the Chief Collector may incur expenses without further appropriation than this section to pay:

- (a) all lawful refunds of duty; or
- (b) all lawful drawbacks of duty; or
- (c) all lawful refunds of administrative penalties under section 143(2).

302. Application of Act to postal articles

(1) Subject to any order made under subsection (2), the provisions of this Act apply to postal articles and to goods contained in postal articles in the same manner as those provisions apply to other goods.

- (2) The Minister, acting on the advice of the Chief Collector, may, by order:
 - (a) provide that any separate postal articles and goods contained in them, whether addressed to the same or to different persons, may be treated for the purposes of this Act as a single postal article consigned to a single person; or
 - (b) prescribe the persons who are to be treated for the purposes of this Act to be the importers or exporters of any postal articles or goods.
- (3) In this section:
 - 'postal article' means any letter, parcel, packet, or any other article received or transmitted by or through the Republic Post and includes any articles imported by any air courier company;
 - 'company' means a company within the meaning of the Corporations Act 1972.

303. Declarations under this Act

(1) A declaration, including a declaration that is made and transmitted electronically, that is required or authorised by this Act must be made in the prescribed form.

(2) If any form requires that a declaration must be made before any person, the declaration may be made before a Customs officer, or before a person authorised under the Oaths, Affidavits and Declarations Act 1976.

304. Power of Chief Collector to determine seals, stamps, and marks

The Chief Collector may determine any seal, stamp or mark for the use of Customs.

305. Information about border crossing craft, persons, and goods

(1) Customs may collect and use the following information about craft, persons, and goods arriving in or departing from the Republic including:

- (a) details of craft movements including the craft name, registration number or identifier, estimated date and time of arrival or departure, place of origin and destination, and the details of any movement of goods; and
- (b) personal information including the person's name, date of birth, gender, passport number, nationality, travel movements or any other relevant matter.

(2) Customs may collect and use the information in subsection (1) for the purposes of facilitating:

- (a) the carrying out of the powers, functions, or duties under this Act;
- (b) the prevention, detection, investigation, prosecution, and punishment of an offence that is, or that if committed in the Republic would be, an offence under this Act;
- (c) the monitoring and processing of border-crossing persons, goods, and craft;
- (d) the protection of border security.

306. Supply of information about border crossing craft, persons and goods

(1) The Chief Collector may supply any information specified in section 305 to an agency, body, or person, in the Republic or another country, whose functions include:

- (a) the prevention, detection, investigation, prosecution, or punishment of an offence that is, or if committed in the Republic would be an offence under this Act; or
- (b) the processing of international passengers at the border by public authorities; or
- (c) border security; or
- (d) the enforcement of a law imposing a pecuniary penalty; or
- (e) the protection of the health and safety of members of the public; or
- (f) the protection of the public revenue; or
- (g) any other purpose as may be prescribed.

(2) The disclosure of information under subsection (1) must be:

- (a) under an agreement between the Chief Collector and the agency, body or person concerned, or a person authorised by the agency, body or person concerned to make the agreement, that complies with subsections (3) and (4); or
- (b) under subsection (6).

(3) The Chief Collector must not enter into an agreement under subsection (2) unless satisfied that it is justified for one or more of the purposes set out in subsection (1).

(4) For the purposes of subsection (2), an agreement:

- (a) must be in writing; and
- (b) must state criteria for the supply of information under it; and
- (c) must state, in respect of information to be disclosed—
 - (i) the use that the person may make of it; and
 - (ii) either—
 - (A) that the person must not disclose it to any other agency, body, or person; or
 - (B) the other agencies, bodies, or persons to which the agency, body or person may disclose

- (d) may state—
 - (i) the form in which the information may be disclosed; or
 - (ii) the method by which the information may be disclosed; and
- (e) may be varied.

(5) This section does not limit the powers of the Chief Collector to enter into agreements not related to the disclosure of information with any agency, body or person.

(6) The Chief Collector may disclose information to an agency, body, or person, in the Republic or another country, without a written agreement specified in subsection (2)(a) if:

- (a) the functions of the agency, body or person include the prevention, detection, investigation, prosecution or punishment of an offence under this Act; and
- (b) the information is disclosed subject to conditions stating—
 - (i) the use that the agency, body, or person may make of it; and
 - (ii) either—
 - (A) that the agency, body or person must not disclose it to any other agency, body, or person; or
 - (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which, and conditions subject to which, the agency, body, or person may do so; and
- (c) the Chief Collector makes and keeps a record of—
 - (i) the information that was disclosed; and
 - (ii) the agency, body, or person to whom it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.

307. Chief Collector to give written reasons for decisions open to appeal to the Minister

(1) if a decision of the Chief Collector is subject to appeal to the Minister the notice of the decision of the Chief Collector must, without undue delay, give the notice of decision, including the reasons for the decision.

(2) Subsection (1) does not limit any duty of the Chief Collector under this Act to give written notice of a decision, including the reasons for the decision.

308. Giving of notice

(1) A notice by the Chief Collector or a Customs officer to a company incorporated in the Republic may be given:

- (a) for a company incorporated under the Corporations Act 1972, by delivery to a person named as a director in the most recent particulars sent to the Registrar of Companies under that Act; or
- (b) by delivery to an employee of the company at the company's head office or principal place of business; or
- (c) by leaving it at the company's registered office; or
- (d) by posting it to the company's registered office; or
- (e) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or its head office or principal place of business; or
- (f) where an individual who is a director, or an employee, or an agent of the company is a registered user of a Customs electronic entry processing system and uses the system for the purposes of the business of the company, by transmitting it by

electronic means to the registered user at the company's registered office or at its head office or principal place of business or otherwise under the normal procedure of operation of the relevant Customs electronic entry processing system in relation to that registered user in respect of the business of the company.

(2) A notice by the Chief Collector or a Customs officer to an overseas company may be given:

- (a) by delivery to a person named in the overseas register as a director of the overseas company and who is resident in the Republic; or
- (b) by delivery to a person named in the overseas register as being authorised to accept service in the Republic of documents on behalf of the overseas company; or
- (c) by delivery to an employee of the overseas company at the overseas company's place of business in the Republic or, if the overseas company has more than one place of business in the Republic, at the overseas company's principal place of business in the Republic; or
- (d) by posting it to the address of the overseas company's principal place of business in the Republic or delivering it to a box at a document exchange which the overseas company is using at the time; or
- (e) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in the Republic of the overseas company; or
- (f) where an individual who is a director, or an employee, or an agent of the overseas company is a registered user of a Customs electronic entry processing system and uses the system for the purposes of the business of the overseas company, by transmitting it by electronic means to the registered user at the principal place of business in the Republic of the overseas company or otherwise under the normal procedure of operation of the relevant Customs electronic entry processing system in relation to that registered user in respect of the business of the overseas company.

(3) A notice by the Chief Collector or a Customs officer to a body corporate, other than a company or an overseas company, may be given:

- (a) by delivery to a person who is a principal officer of the body corporate; or
- (b) by delivery to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
- (c) by posting it to the address of the principal office of the body corporate or delivering it to a box at a document exchange which the body corporate is using at the time; or
- (d) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate; or
- (e) where an individual who is an employee or an agent of the body corporate is a registered user of a Customs electronic entry processing system and uses the system for the purposes of the business of the body corporate, by transmitting it by electronic means to the registered user at the principal office or principal place of business of the body corporate or otherwise under the normal procedure of operation of the relevant Customs electronic entry processing system in relation to that registered user in respect of the business of the body

corporate.

(4) A notice by the Chief Collector or a Customs officer to an individual including a trustee may be given:

- (a) by delivery to that person; or
- (b) by posting it to that person's address or delivering it to a box at a document exchange which that person is using at the time; or
- (c) by sending it by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or
- (d) where the individual is a registered user of a Customs electronic entry processing system, by transmitting it by electronic means to that individual in accordance with the normal procedure of operation of the relevant Customs electronic entry processing system in relation to that individual.

309. Additional provision relating to notices under this Act

(1) For the purposes of this Act, a notice is treated to be given when it is received under subsection (2).

(2) For the purposes of this Act:

- (a) a notice posted or delivered to a document exchange is treated to be received 10 working days after it is posted;
- (b) a notice sent by facsimile machine is treated to have been received on the working day following the day on which it was sent;
- (c) a notice transmitted by electronic means is treated to have been received on the working day following the day on which it was transmitted;
- (d) in proving the giving of notice by post, it is sufficient to prove that—
 - (i) the document was properly addressed; and
 - (ii) all postal or delivery charges were paid; and
 - (iii) the document was posted or was delivered to the document exchange;
- (e) in proving the giving of notice by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned;
- (f) in proving the transmitting of notice by electronic means, it is sufficient to prove that the notice was properly transmitted by electronic means under a normal operating procedure of the Customs electronic entry processing system.

(3) A notice is not to be regarded to have been given to a person if the person proves that, through no fault on the person's part, the notice was not received within the time specified or was not received at all.

310. Regulations

(1) The Cabinet may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make regulations to:

- (a) prescribe application procedures for licensing of an area as a Customs controlled area;
- (b) prescribe the circumstances in which and the time for which no charges be made by the CCA licensee to receive or store imported goods;
- (c) prescribe the time within which inward reports must be delivered under this Act;
- (d) exempt persons or classes of persons from the requirements of sections 29, 30, 31 and 33;
- (e) exempt craft or classes of craft from the application of section 37 or 41;

- (f) prescribe the circumstances in which goods subject to the control of Customs may be unloaded;
- (g) prescribe the method by which the Chief Collector must notify the rates of exchange, of foreign currency to the currency in use in the Republic;
- (h) prescribe the manner in which volume of alcohol in an alcoholic beverage be specified on entry or for the purpose of this Act;
- (i) prescribe exceptions, restrictions or conditions to which the Chief Collector's power to refund or remit duty is subject;
- (j) prescribe the nature or value of sample goods that may be delivered free of duty and the conditions subject to which sample goods may be delivered free of duty;
- (k) prescribe the conditions subject to which a person may be released from a security given for the payment of duty on goods temporarily imported;
- (l) prescribe the conditions subject to which drawbacks of duty may be allowed, and the amounts of drawback that may be allowed;
- (m) prescribe the period for which records of transmissions to or from a Customs electronic entry processing system must be kept by Customs;
- (n) prescribe appeal procedures and conduct of appeals by the Minister, including publication of decisions;
- (o) prescribing the manner by which the Chief Collector may exercise any power to sell goods under this Act, and the manner (including the order of priority) in which the proceeds of sale must be dispersed;
- (p) prescribe the working hours of Customs, and providing for the fixing by the Chief Collector of particular working hours in respect of any particular place;
- (q) prescribe offences in regulations, including penalties not exceeding 100 00 or 6 months imprisonment, or both;
- (r) prescribe any matter required under a provision of this Act to be prescribed.

(2) Regulations made under subsection (1) for areas used for the manufacture or processing of goods that are exempted from the requirement of section 11 to be licensed as a Customs controlled area may prescribe conditions:

- (a) as to the manner of the goods being manufactured or processed;
- (b) as to the source of the product being manufactured or processed;
- (c) limiting the use that may be made of the goods (for example, permitting personal use only);
- (d) limiting the age of any person involved in the manufacture or use of the goods;
- (e) limiting the quantity of goods that may be produced by any measure or other form of description.

311. Incorporation of provisions by reference in regulations

(1) Regulations made under this Act may incorporate by reference any provisions set out in:

- (a) an international trade agreement to which the Republic is a party (such as, a free trade agreement); or
- (b) another document made to give effect to an international trade agreement.

(2) The provisions may be incorporated in the regulations:

- (a) in whole or in part; and
- (b) with modifications, additions, or variations specified in the regulations.

(3) The incorporated provisions:

- (a) are the provisions as they exist at the time that the regulations are made; and

(b) form part of the regulations for all purposes and have legal effect accordingly.

312 Effect of amendments to, or replacement of, provisions incorporated by reference

An amendment to, or replacement of, provisions incorporated under section 311 has legal effect as part of the regulations only if regulations are made that state that the particular amendment or replacement has that effect.

313. Proof of provisions incorporated by reference

(1) A copy of the provisions incorporated under section 311, including any amendment to, or replacement of, the provisions, must be:

- (a) certified as a correct copy of the provisions by the Chief Collector; and
- (b) retained by the Chief Collector.

(2) The production in proceedings of a certified copy of the provisions is, in the absence of proof to the contrary, sufficient evidence of the incorporation in the regulations of the provisions.

314. Access to provisions incorporated by reference

(1) The Chief Collector must:

- (a) ensure that copies of any provisions incorporated under section 311 are available for inspection during working hours, free of charge, at places specified in a notice given under paragraph (d); and
- (b) ensure that copies of the provisions are published on an Internet site that is, so far as practicable, publicly available free of charge; and
- (c) ensure that copies of the provisions are available for purchase at a reasonable price at places specified in a notice given under paragraph (d); and
- (d) give notice by public notice stating that—
 - (i) the provisions are incorporated in particular regulations and the date on which the regulations were made; and
 - (ii) copies of the provisions are available (at all reasonable times) for inspection during working hours, free of charge, at specified places; and
 - (iii) copies of the provisions are available on a specified Internet site; and
 - (iv) copies of the provisions can be purchased at specified places.

(2) A failure to comply with this section does not invalidate regulations that incorporate provisions under section 311.

315. Appeals to the District Court

(1) A party who is dissatisfied with a decision under this Act as being erroneous in point of law or fact may appeal to the District Court.

(2) The notice of appeal is to be filed:

- (a) within 20 working days after the date of the decision appealed against; or
- (b) within a further time allowed by order of the District Court.

(3) The appellant must:

- (a) within 2 months after the date of receiving notice of decision from the Minister, submit the case to the Controller of Customs.; and
- (b) set out the facts and the questions of law or fact to be determined by the District Court.

316. Fees, charges and expenses

(1) The Minister may, acting on the advice of the Chief Collector, by order:

- (a) subject to the approval of the Cabinet prescribe fees and charges payable under this Act or the method by which they are to be assessed and the persons liable to the fees and charges;
- (b) subject to the approval of the Cabinet, prescribe charges for the attendance of Customs officers for the purposes of this Act;
- (c) provide for the liability of any person to pay any actual and reasonable expenses incurred by any Customs officer in respect of any attendance by that officer for the purposes of this Act;
- (d) prescribe the person or classes of persons by whom the charges or expenses referred to in paragraphs (b) and (c) must be paid, or authorising the Chief Collector to determine the person by whom they must be paid.

(2) Different rates of fees or charges, or both, may be prescribed under subsection (1)(a) for different classes of person, or different types of Customs controlled areas, or on any other differential basis.

(3) Different rates of charges may be prescribed under subsection (1)(b) for attendances during the working hours of Customs or attendees outside the working hours of Customs, or on any other differential basis.

(4) An order made under subsection (1) may—

- (a) prescribe the circumstances in which any fee, charge or expense may be refunded, remitted or waived, in whole or in part;
- (b) fix a date by which any fee or charge is to be paid.

317 Approved forms

(1) The Chief Collector may approve forms for any application, declaration, notice, certificates, report, licence, permit or any other authorisation or document required to be issued in a form, including the following forms:

- (a) the form and content of, and the particulars to be verified by declaration in, inward reports required to be delivered under this Act and the manner in which those reports must be delivered to Customs;
- (b) the form, or forms, of certificates of clearance to be issued under this Act;
- (c) the form and manner in which goods to which section 60 applies must be entered, and the particulars to be provided in the entry, and the form of any declaration to be made in the entry;
- (d) the form and manner in which goods to which section 74 applies must be entered, and the particulars to be provided in the entry, and the form of any declaration to be made in the entry;
- (e) the form of application for a Customs ruling;
- (g) the form and manner, and the time within which, the following goods must be reported to Customs—
 - (i) goods exempted from the requirements of section 60 by orders made under section 63(c);
 - (ii) goods treated to be entered for the purposes of section 60 by orders made under section 63(d);
 - (iii) goods exempted from the requirements of section 74 by orders made under section 75(a);

- (iv) goods treated to be entered for the purposes of section 74 by order made under section 75(b).
- (2) The power to approve forms under subsection (1) includes the power to:
 - (a) approve electronic message formats to be used for the electronic transmission of data to or between computers; and
 - (b) amend or revoke any form
- (3) The Chief Collector must not delegate the power under this section to any other person.
- (4) The Chief Collector must publish the forms in a public notice approved by the Chief Collector.

318. Use of reasonable force must be reported

- (1) If force was used when carrying out a function, duty or power under this Act, a written report (setting out the nature of the force use and circumstances in which it was used) must be given to:
 - (a) the Chief Collector, if the force was used by a Customs officer; or
 - (b) the Commissioner of Police, if the force was used by a police officer.
- (2) The report must be given within 5 days of the use of force.

319. Disclosure of information overseas

- (1) The Chief Collector may disclose any information specified in section 320(1) to an overseas agency, body, or person, whose functions include:
 - (a) the prevention, detection, investigation, prosecution, or punishment of an offence that is, or that if committed in the Republic would be an offence under this Act;
 - (b) the processing of international passengers at the border by public authorities; or
 - (c) border security; or
 - (d) the enforcement of a law imposing a pecuniary penalty; or
 - (e) the protection of public revenue.
- (2) The disclosure of information under subsection (1) must be:
 - (a) under an agreement between the Chief Collector and the agency, body, or person concerned that complies with subsections (3) and (4); or
 - (b) under subsection (6).
- (3) The Chief Collector must not enter into an agreement for the purpose of subsection (2)(a) unless satisfied that it is justified to help prevent, identify, or respond to violations of the laws of the Republic or:
 - (a) for an agreement with an international agency or body, to help prevent, identify, or respond to actions of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body;
 - (b) in any other case, to help prevent, identify, or respond to violations of the laws of that other country concerned.
- (4) For the purposes of subsection (2)(a), an agreement:
 - (a) must be in writing; and
 - (b) must state criteria for the disclosure of information under it; and
 - (c) must state, in respect of information to be disclosed,—
 - (i) the use that the agency, body, or person may make of it; and
 - (ii) either—
 - (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or

- (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which, and conditions subject to which, the agency, body, or person may do so; and
- (d) may state—
 - (i) the form in which the information may be disclosed;
 - (ii) the method by which the information may be disclosed; and
- (e) may be varied.
- (5) This section does not limit the general powers of the Chief Collector to enter into agreements not related to the disclosure of information with any overseas agency, body, or person.
- (6) The Chief Collector may disclose information to an overseas agency, body, or person without a written agreement specified in subsection (2)(a) if:
 - (a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of Customs offences of any kind or of other offences punishable by imprisonment; and
 - (b) the information is disclosed subject to conditions stating—
 - (i) the use that the agency, body, or person may make of it, and
 - (ii) either—
 - (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or
 - (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which, and conditions subject to which, the agency, body, or person may do so; and
 - (c) the Chief Collector makes and keeps a record of —
 - (i) the information that was disclosed; and
 - (ii) the agency, body, or person to which it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.
- (7) Despite subsection (4), if, before the commencement of this section, the Government or Chief Collector has entered into any agreement or arrangement with an agency, body, or person in another country and that agreement or arrangement could have been made or entered into under this section, the agreement or arrangement continues and has effect as if it had been made or entered into under this section.
- (8) The Chief Collector must not disclose any information under subsection (6) unless satisfied that it relates to a suspected:
 - (a) violation of the law of the Republic; or
 - (b) for a disclosure to an international agency or body, action of a kind whose prevention or identification, or responding to which, is among the functions of that international agency or body; or
 - (c) in any other case, violation of the law of that other country.

320. Information that may be disclosed

- (1) The following information may be disclosed under section 319:
 - (a) airline passenger and crew lists;
 - (b) craft movements (which may include passenger and crew lists);
 - (c) past travel movements of specified persons;
 - (d) previous convictions of specified persons;
 - (e) general history of specified persons (which may include associates and networks);
 - (f) *modus operandi* of specified persons;

- (g) known currency and other financial transactions of relevant interest, including involvement in money laundering;
- (h) intelligence analysis assessments and reports;
- (i) details of mail interceptions;
- (j) personal identification details (which may include photographs, distinguishing features, and details of identity or travel documents);
- (k) names and details of Customs officers or other Customs employees, freight forwarding and transport employees, and employees in the trade and travel business;
- (l) details of known or suspected involvement of persons in illicit activities;
- (m) information in import and export entries.

(2) Section 319 does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement to which the Republic is a party (whether by ratification, accession or otherwise).

321. Customs may for certain purposes collect, use, or disclose certain information

(1) This section applies to information viewed by Customs under section 50 or 54, and to information to which Customs is given access under section 112.

(2) Customs may collect, use, or disclose the information for any of the following purposes:

- (a) carrying out a power, function, or duty under this Act;
- (b) the prevention, detection, investigation, prosecution, and punishment of an offence that is, or that if committed in the Republic would be an offence under this Act;
- (c) the processing of international passengers at the border by public authorities;
- (d) the protection of border security;
- (e) the protection of the health and safety of members of the public.

(3) If information disclosed for a specified purpose under subsection 319(2) is personal information, the agency, body, or person:

- (a) is authorised by this section to obtain and collect that information for that purpose; but
- (b) may keep, use, or disclose that information only (to another enforcement agency with the approval of the Chief Collector).

(4) Section 319 applies, with necessary modifications, to the disclosure of the information to an agency, body, or person in another country whose functions include:

- (a) the prevention, detection, investigation, prosecution, and punishment of an offence that is, or that if committed in the Republic would be an offence under this Act;
- (b) the processing of international passengers at the border by public authorities; or
- (c) border security; or
- (d) the protection of the health and safety of members of the public.

(5) Nothing in this section limits section 54 or 57.

Division 4 – Amendment, repeals, validations, savings and transitional provisions

322. Consequential amendments

Every reference in any enactment to the Customs Act 1921 is to be read as a reference to the Customs Act 2014.

323. Repeals

(1) The Customs Act 1921 is repealed.

(2) Despite the repeal of the regulations listed under subsection (1), the provisions of those regulations that are not inconsistent with the provisions of this Act continue in force as if they are made under this Act until those provisions are replaced or repealed under this Act.

(3) Any other regulations or other statutory instrument (existing at the commencement of this Act) made under the Customs Act 1921 continue as if they were made under this Act until they are replaced or repealed under this Act.

324. Validation of acts under Inter-Governmental Agreements relating to Customs duties suspensions

An act done pursuant to an Inter-Governmental Agreement relating to Customs duties suspensions before the commencement of this Act continues to have effect as if they are authorised under this Act.

325. Savings for proceedings and other matters

Despite the repeal of the Customs Act 1921, any:

- (a) civil proceedings commenced in a court before the commencement of this Act; or
- (b) administrative decisions or tariff classification opinions given under the Customs Act 1921; or
- (c) existing rights or proceedings relating to a refund, remission or drawback of duty under the Customs Act 1921; or
- (d) any application made under the provisions of the Customs Act 1921 for waiver of any forfeiture; or
- (e) any condemnation of goods in accordance with the provisions of the Customs Act 1921, –

continue in force as if they have been made or authorised under this Act.

Division 5 – Transitional provisions

326. Transitional provisions relating to terminology

(1) Subject to any other provisions of this Act, at the commencement of this Act:

- (a) any reference to Customs Department, in any enactment, order or document, is to be read as a reference to the Republic Customs Service;
- (b) any reference to an officer of Customs or proper officer, in any enactment or any document, is to be read as a reference to a Customs officer;
- (c) any reference to the Chief Collector of Customs in any enactment or document, is to be read as a reference to the Chief Collector of the Republic Customs Service.

(2) On and after the commencement of this section:

- (a) all proceedings that were pending by or against the Customs Department immediately before the commencement of this Act may be carried on,

- completed, or enforced by or against the Republic Customs Service; and
- (b) all rights and obligations of the Customs Department existing immediately before the commencement of this section become the rights and obligations of the Republic Customs Service.

327. Transitional provision concerning assessment and payment of duty

The provisions of the Customs Act 1921 and any regulations, Orders, warrants, and acts of authority under that Act continue in force and apply to—

- (a) the payment of duty payable before the commencement of this section;
and
- (b) the assessment and payment of duty assessable before the commencement of this section—

as if this Act had not been passed.

328. Examination place treated to be a Customs controlled area

Any place that was, immediately before the commencement of this section, an examination place appointed by the Chief Collector of Customs in accordance with section 14(b) of the Customs Act 1921 is treated for the purposes of this Act to be a CCA licensed area for the purposes described in paragraphs (d) and (e) of section 11.

329. Sufferance wharf, and wharf treated to be a Customs controlled area

A place that was, immediately before the commencement of this section, a sufferance wharf appointed by the Chief Collector of Customs under the Customs Act 1921 section 14, is treated for the purposes of this Act to be a CCA licensed area for the purposes described in paragraphs (d) and (e) of section 11.

330. Staff accommodation, facilities and transit buildings treated to be a Customs controlled area

(1) A place that was, immediately before the commencement of this section:

- (a) staff accommodation under section 16 or facilities directed by the Minister to be for the exclusive use of officers of Customs under the Customs Act 1921; or
- (b) a transit building declared by the Minister to be required under the Customs Act 1921,—

is treated for the purposes of this Act to be a CCA licensed area for the purposes described in paragraphs (d) and (e) of section 11.

(2) If an area in any place referred to in subsection (1)(a) was, immediately before the commencement of this section, entitled to be exempt from charges under the Customs Act 1921, that area continues to be exempt from those charges until an application in respect of that area has been made under section 334 of this Act and dealt with under this Act.

331. Export warehouse treated to be a Customs controlled area

A place that was, immediately before the commencement of this section, an export warehouse licensed under the Customs Act 1921 is treated for the purposes of this Act to be a CCA licensed area for the purpose described in section 11(b) of this Act.

332. Manufacturing area treated to be a Customs controlled area

A place that was, immediately before the commencement of this section, a manufacturing area licensed under the Customs Act 1921 is treated for the purposes of this Act to be a CCA licensed area for the purpose described in section 11(a) of this Act.

333. Transitional provision relating to conditions of appointment or licence

A specification, limitation, condition, or restriction that, immediately before the commencement of this Act, applied under the Customs Act 1921 to any examination place, wharf, sufferance wharf, export warehouse, or manufacturing area continues to apply despite the passing of this Act until an application in respect of that area has been made in accordance with section 334 of this Act and dealt under this Act.

334. Application for licence as Customs controlled area to be made within 40 working days

Not later than 40 working days after the commencement of this Act, the owner or occupier of or person operating in any area to which sections 328 to 332 of this Act may apply under section 12 of this Act for a CCA licence.

335. Transitional status to continue until application made and disposed of

(1) Subject to subsection (2), an area that is treated to be a Customs controlled area under any of sections 328 to 332 continues to be a Customs controlled area until an application under section 12 has been made pursuant to section 334 of this Act and dealt with under this Act.

(2) If, at the expiry of the period specified in section 334 of this Act, no application has been made in accordance with that section in respect of an area to which any of sections 328 to 332 of this Act apply, that area ceases to be a Customs controlled area.

336. Transitional provision relating to persons approved to defer payment of duty

(1) Subject to subsection (2), a person who, immediately before the commencement of this section, was approved under the Customs Act 1921 to defer the payment of duty is treated to be an approved person for the purposes of section 102(6) of this Act.

(2) As soon as practicable after the commencement of this section the Chief Collector must issue to the person referred to in subsection (1) a notice under this Act specifying the terms and conditions applicable for the deferment of duty in place of the conditions imposed under the Customs Act 1921.

(3) Despite subsection (2), the Chief Collector may vary or cancel any approval to which subsection (1) applies, or may vary or cancel any term or condition affecting the approval.

337. Transitional provisions relating to any civil or criminal investigations under the Customs Act 1921

(1) A person who may exercise a power under any of sections 162, 176, 184, 185, 189, 190, 197, and 203 of this Act for the purpose of investigating offences suspected of having been committed against this Act may also exercise that power under this Act for the purpose of investigating offences suspected of having been committed against the Customs Act 1921.

(2) For the purposes of subsection (1), a reference to this Act:

(a) to any offence in sections 176(1), 189(1), 190(1), and 197(1) of this Act;

(b) to goods in section 184(1) of this Act;

(c) to a thing in section 197(1)(c) of this Act, —

is taken to include a reference to the Customs Act 1921.

(3) After exercising, by virtue of subsection (1), any power under this Act in relation to a suspected offence against the Customs Act 1921, the Chief Collector or a Customs officer, as the case may be, must not exercise any corresponding power under the Customs Act 1921 in relation to that suspected offence.

(4) This section does not affect section 30 of the Interpretation Act 2011.

338. Transitional regulations

(1) The Cabinet may, within 2 years of the commencement of this Act, make regulations to deal with any other transitional and savings matters.

SCHEDULE 1

(section 91)

PROHIBITED IMPORTS

- (a) False or counterfeit coin or banknotes; and any coin that is not of the established standard in weight or composition; and any coin or banknotes that are intended for circulation in the Republic and are not legal tender in the Republic.
- (b) Objectionable publications as defined in section 2.
- (c) All goods the importation of which is prohibited by any enactment or bylaw.

SCHEDULE 2

Customs Valuation

(sections 94, 95& 272(1)(b))

VALUATION OF THE GOODS FOR THE PURPOSES OF THE TARIFF

1 Definitions

- (1) In this Schedule:

'computed value' means the value determined in accordance with clause 7;

'country of export, or the country from which any goods are exported' means the country from which the goods are shipped directly to the Republic, or as the case may be, the country from which the goods are deemed to be shipped under this Act;

'deductive value' means the value determined in accordance with clause 6;

'goods of the same class or kind' means imported goods that:

- (a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and

- (b) for the purposes of:

- (i) clause 6, were exported from any country; and

- (ii) clause 7, were produced in and exported from the country in and from which the goods being valued were produced and exported;

'identical goods' means imported goods that:

- (a) are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance

that do not affect the value of the goods; and

- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued—

but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

'price paid or payable' in relation to any goods, means the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods;

'to produce' includes to grow, to manufacture, and to mine;

'similar goods' means imported goods that:

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

'sufficient information' in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment;

'transaction value' means the value determined in accordance with clauses 2 and 3.

- (2) For the purposes of this Schedule, persons are deemed to be related only if—
 - (a) they are officers or directors of one another's business; or
 - (b) they are legally recognised partners in business; or
 - (c) they are employer and employee; or
 - (d) any person directly or indirectly owns, controls, or holds 5 percent or more of the outstanding voting stock or shares of both of them; or
 - (e) one of them directly or indirectly controls the other; or
 - (f) both of them are directly or indirectly controlled by a third person; or

- (g) together they directly or indirectly control a third person; or
 - (h) they are members of the same family.
- (3) For the purposes of this Schedule, persons are deemed to be members of the same family if—
- (a) they are connected by blood relationship within the fourth degree of relationship; or
 - (b) they are married to, or in a civil union or a de facto relationship with, one another or if one is married to, or in a civil union or a de facto relationship with, a person who is within the fourth degree of relationship to the other; or
 - (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.
- (4) For the purposes of this Schedule, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods are deemed to be identical goods or similar goods, as the case may be.
- (5) For the purposes of this Schedule, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods must not be regarded as part of the Customs value in any case where—
- (a) the charges are distinguished from the price actually paid or payable for the goods; and
 - (b) such goods are actually sold at the price declared as the price actually paid or payable; and
 - (c) the buyer, if required, can demonstrate that—
 - (i) the financing arrangement was made in writing; or
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

2 Transaction value as primary basis of valuation

- (1) The Customs value of imported goods must be their transaction value, that is, the price paid or payable for the goods when sold for export to the Republic, adjusted in accordance with clause 3, if—
- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that—
 - (i) are imposed by law; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods; or
 - (b) the sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be

- determined; or
- (c) where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with clause 3; or
 - (d) the buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time,—
 - (i) their relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer demonstrates that the transaction value of the goods meets the requirements set out in subclause (2).
- (2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer must produce evidence that the transaction value of the goods being valued, taking into consideration any relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other goods exported at the time or substantially at the same time as the goods being valued, being—
- (a) the transaction value of identical goods or similar goods in respect of a sale of those goods for export to the Republic between a seller and buyer who are not related at the time of the sale; or
 - (b) the deductive value of identical or similar goods determined in accordance with clause 6; or
 - (c) the computed value of identical or similar goods determined in accordance with clause 7.
- (3) In any case where the Chief Collector is of the opinion that the relationship between the buyer and seller of any goods influenced the price paid or payable for the goods, the Chief Collector must inform the importer, in writing if so requested, of the grounds on which the Chief Collector formed that opinion, and must give the importer a reasonable opportunity to satisfy the Chief Collector that the relationship did not influence the price.
- (4) Where subclause (2) applies, the importer must, without limiting the generality of subclause (2), provide the following information:
- (a) the nature of the goods being valued:
 - (b) the nature of the industry that produces the goods being valued:
 - (c) the season in which the goods being valued are imported:
 - (d) whether a difference in values is commercially significant:
 - (e) the trade levels at which the sales take place:
 - (f) the quantity levels of the sales:
 - (g) any of the amounts referred to in clause 3:
 - (h) the costs, charges, or expenses incurred by a seller when the seller sells to a buyer

to whom the seller is not related that are not incurred when the seller sells to a buyer to whom the seller is related.

- (5) Where,—
- (a) in the opinion of the Chief Collector, the Customs value cannot be determined under this clause; or
 - (b) the Chief Collector has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence that the declared Customs value represents the total amount actually paid or payable for the imported goods, the Chief Collector is still not satisfied that the Customs value can be determined under this clause—
the Chief Collector may determine the Customs value of the goods by proceeding sequentially through clauses 4 to 8 to the first such clause of this Schedule under which the Customs value can, in the opinion of the Chief Collector, be determined.
- (6) Despite subclause (5), on the written request of the importer to the Chief Collector, the order of consideration of the valuation basis provided for in clauses 6 and 7 must be reversed.

3 Adjustment of price paid or payable

- (1) In determining the transaction value of goods under clause 2, the price paid or payable for the goods must be adjusted—
- (a) by adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to—
 - (i) commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods; and
 - (ii) the packing costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases, and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to the Republic; and
 - (iii) the value of any of the following goods and services:
 - (A) materials, component parts, and other goods incorporated in the imported goods:
 - (B) tools, dies, moulds, and other goods utilized in the production of the imported goods:
 - (C) materials consumed in the production of the imported goods:
 - (D) engineering, development work, artwork, design work, plans, and

- sketches undertaken elsewhere than in the Republic and necessary for the production of the imported goods, —
- determined in accordance with subclause (2), that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and
- (iv) royalties and license fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to the Republic, exclusive of charges for the right to reproduce the imported goods in the Republic; and
 - (v) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and
 - (vi) the value of any materials, component parts, and other goods incorporated in the imported goods for the purpose of repair to, or refurbishment of, those goods prior to export of the goods to the Republic, and the price paid for the service of repair or refurbishment, as the case may be; and
 - (vii) the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction:
- (b) by deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the goods, equal to—
- (i) the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods from the time the goods have left the country of export, other than any cost, charge, or expense referred to in subparagraph (ii)(B); and
 - (ii) any of the following costs, charges, or expenses:
 - (A) any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported:
 - (B) any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within the Republic and any reasonable cost, charge, or expense associated therewith:

- (C) any Customs duties or other taxes payable in the Republic by reason of the importation or sale of the goods,—
if the cost, charge, or expense is identified separately from the balance of the price paid or payable for the goods:
- (c) in respect of carrier media bearing data or instructions, by deducting the value of the data or instructions from the price paid or payable for the goods if—
 - (i) the value of the data or instructions is distinguished from the cost or value of the carrier media; and
 - (ii) the data or instructions are not incorporated in data processing equipment.
- (2) The value of the goods and services described in subclause (1)(a)(iii) must be determined—
 - (a) in the case of materials, components, parts and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued—
 - (i) by ascertaining—
 - (A) their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time of their acquisition;
or
 - (B) their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was related to the buyer at the time of their acquisition but who did not produce them; or
 - (C) their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
 - (ii) by adding thereto—
 - (A) the cost of their transportation to the place of production of the goods being valued; and
 - (B) the value added to them by any repairs or modifications made to them after they were so acquired or produced:
 - (b) In the case of tools, dies, moulds, and other goods, utilised in the production of the goods being valued—
 - (i) by ascertaining—
 - (A) their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time they were so acquired; or
 - (B) their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a person related to the buyer at the time they were so acquired but who did not produce them;
or

- (C) their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
- (ii) by adding thereto—
 - (A) the cost of their transportation to the place of production of the goods being valued; and
 - (B) the value added to them by any repairs or modifications made to them after they were so acquired or produced; and
- (iii) by deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired or produced:
- (c) in the case of engineering, development work, artwork, design work, plans and sketches, undertaken elsewhere than in the Republic and necessary for the production of the goods being valued by ascertaining—
 - (i) their cost of acquisition or of the lease thereof, where they were acquired or leased by the buyer from a person who was not related to the buyer at the time they were so acquired or leased and are not generally available to the public; or
 - (ii) their cost of acquisition or of the lease thereof incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to the buyer at the time they were so acquired or leased, but who did not produce them and are not generally available to the public; or
 - (iii) the cost to the public of obtaining them where they are available generally to the public; or
 - (iv) the cost of production thereof where they were produced by the buyer or a person related to the buyer at the time of their production.
- (3) For the purposes of subclause (1)(c), the expression '**carrier media**' does not include integrated circuits, semi-conductors and similar devices, or articles incorporating such circuits or devices; and the expression '**data or instructions**' does not include sound, cinematic, or video recordings.
- (4) Where any adjustment in terms of this clause cannot, in the opinion of the Chief Collector, be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under clause 2.

4 Transaction value of identical goods as Customs value

- (1) Subject to subclauses (2) to (4), where the Customs value of imported goods cannot, in the opinion of the Chief Collector, be determined under clause 2, the Customs value of the goods must be the transaction value of identical goods in respect of a sale of those goods for export to the Republic if that transaction value is the Customs value Formatted: Bullets and Numbering Formatted: Bullets and Numbering of the identical goods and the identical goods were exported at the same or substantially the same

- time as the goods being valued and were sold under the following conditions—
- (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
 - (b) in the same or substantially the same quantities as the goods being valued.
- (2) Where the Customs value of imported goods cannot be determined under subclause (1) because identical goods were not sold under the conditions described in subclause (1)(a) and (b), there must be substituted therefor identical goods sold under any of the following conditions—
- (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or
 - (b) to a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or
 - (c) to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.
- (3) For the purposes of determining the Customs value of imported goods under subclause (1), the transaction value of identical goods must be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for—
- (a) commercially significant differences between the costs, charges, and expenses referred to in clause 3(1)(a)(vii) in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport:
 - (b) where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2), differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be,—
if each amount can, in the opinion of the Chief Collector, be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued must not be determined on the basis of the transaction value of those identical goods under this clause.
- (4) Where, in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all the requirements set out in subclauses (1) and (3) or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2) that meet all the requirements set out in this clause that are applicable by virtue of subclause (2), the Customs value of the goods being valued

must be determined on the basis of the lowest such transaction value.

5 Transaction value of similar goods as Customs value

- (1) Subject to subclause (2) and subclauses (2) to (4) of clause 4, where the Customs value of imported goods cannot, in the opinion of the Chief Collector , be determined under clause 4, the Customs value of the goods must be the transaction value of similar goods in respect of a sale of those goods for export to the republic if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions—
 - (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
 - (b) in the same or substantially the same quantities as the goods being valued.
- (2) Subclauses (2) to (4) of clause 4 apply to this clause in respect of similar goods as if every reference in those subclauses to identical goods were a reference to similar goods.

6. Deductive value as Customs value

- (1) Subject to subclauses (5) and (6) of clause 2, where the Customs value cannot, in the opinion of the Chief Collector , be determined under clause 5, the Customs value of the goods must be the deductive value in respect of the goods.
- (2) Where the goods being valued or identical goods or similar goods are sold in the Republic in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the deductive value of the goods being valued must be the price per unit in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.
- (3) Where the goods being valued or identical goods or similar goods are sold in the Republic in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued must be the price per unit in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.
- (4) Where the goods being valued or identical goods or similar goods are not sold in the Republic in the circumstances described in subclause (2) or subclause (3), but the

goods being valued, after being assembled, packaged, or further processed in the Republic, are sold in the Republic before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this subclause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued must be the price per unit, in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued are so sold.

- (5) For the purposes of subclauses (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, must be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after their importation to persons who—
 - (a) are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
 - (b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in clause 3(1)(a)(iii),—
at which the greatest number of units of the goods is sold where, in the opinion of the Chief Collector, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.
- (6) For the purposes of subclauses (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, must be adjusted by deducting therefrom an amount equal to the aggregate of—
 - (a) an amount, determined in accordance with subclause (7), equal to—
 - (i) the amount of commission generally earned on a unit basis; or
 - (ii) the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis—
in connection with sales in the Republic of goods of the same class or kind as those goods:
 - (b) reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within the Republic and reasonable costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
 - (c) the costs, charges, and expenses referred to in clause 3(1)(b)(i) incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:

- (d) any Customs duties or other taxes payable in the Republic by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this subclause:
 - (e) where subclause (4) applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in the Republic of the goods, if that amount is determined, in the opinion of the Chief Collector, on the basis of sufficient information.
- (7) The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in subclause (6)(a) must be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied—
- (a) by or on behalf of the importer of the goods being valued; or
 - (b) where the information supplied by or on behalf of the importer of the goods being valued is not sufficient information, but an examination of sales in the Republic of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can, in the opinion of the Chief Collector, be obtained.
- (8) Where an amount referred to in subclause (6)(e) in respect of any goods being valued cannot, in the opinion of the Chief Collector be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under subclause (4).

7 Computed value as Customs value

- (1) Subject to subclauses (3) and (5) of clause 2, where the Customs value of imported goods cannot, in the opinion of the Chief Collector, be determined under clause 6, the Customs value of the goods must be the computed value in respect of those goods.
- (2) The computed value of the goods being valued is the aggregate of amounts equal to—
- (a) the costs, charges, and expenses incurred in respect of, or the value of,—
 - (i) materials employed in producing the goods being valued; and
 - (ii) the production or other processing of the goods being valued,— determined on the basis of—
 - (A) the commercial accounts of the producer of the goods being valued; or
 - (B) any other sufficient information relating to the production of the goods being valued—
that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being valued,

- including, without limiting the generality of the foregoing,—
- (iii) the costs, charges, and expenses referred to in clause 3(1)(a)(ii):
 - (iv) the value of any of the goods and services referred to in clause 3(1)(a)(iii) and (vi) , determined and apportioned to the goods being valued as referred to in that clause, whether or not such goods and services have been supplied free of charge or at a reduced cost:
 - (v) the costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in clause 3(1)(a)(iii):
- (b) the amount, determined in accordance with subclause (4), for profit and general expenses, considered together as a whole, generally reflected in sales for export to the Republic of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in the Republic who are not related to the producers from whom they buy the goods at the time the goods are sold to them.
- (3) For the purposes of this clause, the expression general expenses means the direct and indirect costs, charges, and expenses of producing and selling goods for export, other than the costs, charges, and expenses referred to in subclause (2)(a).
 - (4) The amount of profit and general expenses referred to in subclause (2)(b) must be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied—
 - (a) by or on behalf of the producer of the goods being valued; or
 - (b) where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to the Republic of the narrowest group or range of goods of the same class or kind from which sufficient information can, in the opinion of the Chief Collector, be obtained.

8 Residual basis of valuation

- (1) Where the Customs value of imported goods cannot, in the opinion of the Chief Collector, be determined under clause 7, it must be determined on information available in the Republic on the basis of a value derived from the methods of valuation set out in clauses 2 to 7 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.

- (2) A Customs value must not be determined on the basis of—
- (a) the selling price in the Republic of goods produced in the Republic; or
 - (b) a basis which provides for the acceptance of the higher of 2 alternative values; or
 - (c) the price of goods on the domestic market of the country of exportation; or
 - (d) the cost of production, other than computed values that have been determined for identical or similar goods in accordance with clause 7; or
 - (e) the price of goods for export to a country other than the Republic, unless the goods were imported into the Republic; or
 - (f) minimum Customs values; or
 - (g) arbitrary or fictitious values.