

THE CUSTOMS ACT, 2019

(Act of 2019)

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SCHEDULES.

A BILL

ENTITLED

AN ACT to Repeal and replace the Customs Act, and to provide for connected matters.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1.—(1) This Act may be cited as the Customs Act, 2019, and shall come into operation on a date to be specified by the Minister by order published in the *Gazette*.

Short title
and
commence-
ment.

(2) For the purposes of subsection (1), different dates may be specified as regards different provisions of this Act.

Interpreta-
tion.

2.—(1) In this Act—

“accompanied baggage”, in relation to a person, means all goods physically with the person at the time when the person is processed through customs at the place of entry to or exit from Jamaica;

“advance ruling” means a ruling in accordance with section 189(2);

“agent” means a person who is appointed in accordance with section 270;

“aircraft” has the meaning assigned to it by the *Civil Aviation Act*;

“arrival”, in relation to a means of transport, means the time at which the means of transport is in a position that allows goods being transported to be unloaded, or persons being transported to disembark from the means of transport;

“assessment”, in relation to duty or tax, means a determination of the amount of duty or tax payable on goods, and includes a provisional assessment, self-assessment and re-assessment;

“break bulk cargo” means cargo transported on board a means of transport, in separate packages or as loose items, but excludes cargo in containers;

“bulk cargo” means unpacked dry or liquid homogenous cargo transported loose in the hold or cargo space of a means of transport;

“cargo” means any goods on board, or intended to be loaded on board, or off-loaded from, a means of transport, other than—

- (a) stores;
- (b) the accompanied or mishandled baggage of travellers and crew members; and
- (c) letters or parcels conveyed by post,

and for the purpose of paragraph (b) “mishandled baggage” means baggage that has inadvertently or involuntarily become separated from the traveller or crew member;

“cargo aggregator” means a person who, for reward, consolidates, assembles or otherwise aggregates cargo, being cargo to be carried for different persons, for carriage together on a means of transport—

- (a) in cargo containers or otherwise;
- (b) under a shared space or other negotiated volume of cargo arrangement with the owner or operator of the means of transport; and
- (c) whether that person is the carrier who actually transports the cargo, or an agent or customs broker who arranged the transport of the cargo;

“carrier”, in relation to a means of transport, means the owner or the person in charge of, or responsible for, the operation of the means of transport;

“clearance”, in relation to goods, means the accomplishment of the requirements necessary under the customs laws to allow the goods to be placed under a customs procedure;

“coastwise carriage procedure” means the procedure under which—

- (a) goods in free circulation or under a customs procedure; or
- (b) imported goods that have not been cleared, on the condition that they will be transported in a vessel other than the vessel in which they arrived in Jamaica,

are loaded on board a vessel at a place in Jamaica and transported to another place in Jamaica where the goods are then un-loaded;

“Commissioner” means the Commissioner of Customs under the *Revenue Administration Act*;

“compensating products” means products resulting from the manufacture, processing, or repair, of goods for which the use of the inward processing procedure or the outward processing procedure is authorised;

“crew”, in relation to a means of transport, means—

- (a) the Master of the means of transport; and
- (b) any other person travelling on board the means of transport for the purpose of performing work in connection with the journey;

“Customs Agency” means the Jamaica Customs Agency designated to be an Executive Agency under the *Executive Agencies Act*;

“customs broker” means a person licensed under this Act to carry on business in Jamaica as a customs broker;

“customs control” means any measure employed, or condition imposed, by the Customs Agency to ensure compliance with customs laws;

“customs controlled airport” means an area appointed under section 29;

“customs controlled area” means any premises, facility, place or other area, appointed, designated, or authorised to be used (as the case may require), under section 27, 29 or 30;

“customs controlled port” means a port designated under section 27;

“customs laws” means this Act and all other laws relating to the importation, exportation, movement, or storage, of goods, the administration or enforcement of which are the responsibility of the Customs Agency or the Commissioner;

“customs office” means a place designated by the Commissioner under section 30(1)(i) as a customs office;

“customs private bonded warehouse” means a place that is authorised for use under section 30(1)(g);

“customs procedure” means—

- (a) the duty free shop procedure;
- (b) the export procedure;
- (c) the inward processing procedure;
- (d) the national transit procedure;
- (e) the outward processing procedure;
- (f) the stores procedure;

- (g) the temporary admission procedure;
- (h) the transit to export procedure;
- (i) the trans-shipment procedure;
- (j) the temporary export procedure;
- (k) the warehousing procedure;
- (l) the home use procedure; or
- (m) any other procedure designated to be a customs procedure by the Commissioner by order published in the *Gazette*;

“customs public bonded warehouse” means a place that is designated under section 30(1) (h);

“Customs System” means the electronic system established by the Commissioner under section 180; First Schedule.

“Customs Tariff” means the list of goods in respect of which duty may be imposed together with the applicable rate of duty thereon, set out in the First Schedule;

“damage”, in relation to goods, includes any deterioration or spoiling of the goods, due to any act or omission, that does not render the goods commercially valueless;

“declarant” means a person who makes a goods declaration to the Commissioner or in whose name a goods declaration is made to the Commissioner, and where used in relation to goods means the declarant in respect of those goods;

“divert” means to cause goods to be imported, leave a customs controlled area, or be used in Jamaica, other than in compliance with the customs laws;

“document” means, in addition to a document in writing, anything, or any manner, in which information of any description is recorded or stored;

“drawback” means the amount of duty that may be repaid under section 22;

“dutiable goods” means goods on which duty or tax is imposed pursuant to the customs laws;

“duty” means customs duty payable as specified in the Customs Tariff;

“electronic” has the meaning assigned to it under section 2 of the Electronic Transactions Act, and “electronically” shall be construed accordingly;

“equivalent goods” means domestic or imported goods identical in description, quality, and technical characteristics, to those imported for inward processing which they replace;

“export” or “export from Jamaica” means taking goods out of Jamaica;

“exporter” means, in relation to goods exported from, or to be exported from, Jamaica, the person who exported, is in the process of exporting, or intends to export, those goods, and such a person includes a person who, at the time when the goods are exported or in the process of being exported is the owner of the goods;

“foreign-going aircraft” means an aircraft—

- (a) originating from a place outside Jamaica traveling to one or more destinations in Jamaica, with a return destination outside Jamaica; or
- (b) traveling to one or more destinations outside Jamaica;

“foreign-going vessel” means a vessel—

- (a) originating from a place outside Jamaica traveling to one or more destinations in Jamaica, with a return destination outside Jamaica; or
- (b) traveling to one or more destinations outside Jamaica;

“free circulation”, in relation to goods, means that the goods may be disposed of without customs restriction;

“functions” includes powers and duties;

“goods” means any wares, supplies, merchandise, articles, products, commodities, substances, documents, and any other things capable of being transported, whether loose, packed in a package or holder, containerized or in bulk, and includes—

- (a) animals, whether dead or alive, or parts thereof;
- (b) plants, whether dead or alive, or parts thereof;
- (c) postal articles;
- (d) accompanied and unaccompanied baggage of persons entering or leaving Jamaica; and
- (e) vessels, aircraft and vehicles;

“goods declaration” or “declaration” means a statement made, in the manner prescribed by Rules, by which the declarant indicates the customs procedure to be applied to goods and provides the information required by the Commissioner for the application of that procedure;

“Government warehouse” means a place designated under section 30(1)(f), and any reference in any other enactment to a Queen’s Warehouse shall be construed as a reference to a Government warehouse;

“import”, in relation to goods, means bringing goods into Jamaica;

“import duty” means duty imposed on imported goods in accordance with the Customs Tariff;

“importer” means, in relation to goods imported into, or to be imported into, Jamaica, the person who imported, is in the process of importing, or intends to import, those goods, and such a person includes a person who, at the time when the goods are imported or in the process of being imported, is the owner of the goods;

“international clearance arrangement” means an arrangement for the clearance of goods in accordance with an agreement between Jamaica and another country, for the purpose of regulating the temporary admission or the temporary export of goods;

“inward processing” means the customs procedure, governed by sections 151 and 152, whereby goods are imported, conditionally relieved from the application of duty or tax, on the basis that the goods are intended for manufacture, processing or repair, and subsequent exportation;

“Jamaica” includes any place to which the sovereignty of Jamaica as an archipelagic State extends under section 5 of the *Maritime Areas Act*;

“Master”, in relation to a vessel or aircraft, includes a person for the time being having charge or command of the vessel or aircraft;

“means of transport” means a vessel, aircraft or vehicle, engaged in the transport of goods or persons;

“national transit” means the customs procedure, as described in section 91, whereby goods are transported under customs control from one customs controlled area to another;

“officer” means—

- (a) any person employed in the Customs Agency; or
- (b) any individual acting in the aid of any person mentioned in paragraph (a) in the execution of that person’s office or duties;

“origin”, in relation to goods, means the country in which the goods were produced, or regarded as having been produced, according to the rules of origin applicable to the goods;

“outright export” means the export of goods with the intention that those goods remain permanently outside Jamaica;

- “outward processing” means the customs procedure, as described in section 153, whereby goods that are in free circulation in Jamaica may be temporarily exported for manufacturing, processing or repair, and then re-imported with total or partial exemption from import duty or tax;
- “place of entry” means a place designated under section 27, 29 or 30 as a place of entry for the control of means of transport, goods, or persons, entering Jamaica;
- “place of exit” means a place designated under section 27, 29 or 30 as a place of exit for the control of means of transport, goods, or persons, leaving Jamaica;
- “prohibited goods” means goods the subject of an order under section 246(1) or which are prohibited goods under section 246(2);
- “proper officer” means, in relation to any act, the officer authorised to perform that act on behalf of the Commissioner, pursuant to section 277;
- “provisional goods declaration” means a goods declaration in accordance with section 162;
- “re-assessment” shall be construed in accordance with section 14, and includes a further re-assessment under that section;
- “refund”, in relation to any duty or tax or any penalty paid to the Commissioner under this Act by a person, means the repayment to that person of the whole or any part of the duty, tax, or penalty (as the case may be), but excludes a drawback;
- “registered”, in relation to a goods declaration, means the issuance by the Commissioner of a registration number in respect of that declaration, in the manner prescribed by Rules;
- “release” means the action by the Commissioner to allow goods undergoing clearance to be placed at the disposal of the declarant;

“restricted goods” means goods described in section 248;

“Rules” means rules prescribed by the Commissioner under section 261;

“rules of origin” means applicable rules established by national legislation or international agreements applied by the Government of Jamaica, for determining the origin of goods;

“small vessel” means a ship required to be licensed under the Shipping Act;

“Special Economic Zone” has the meaning assigned to it under the *Special Economic Zones Act*;

“stores” means—

- (a) goods intended for consumption by passengers or crew on board vessels or aircraft;
- (b) goods necessary for the operation or maintenance of vessels or aircraft, including fuel and lubricants, but excluding spare parts and equipment; and
- (c) goods for sale to the passengers or crew of vessels or aircraft;

“stores procedure” means the procedure governed by sub-Part I of Part V;

“sufferance wharf” means premises within a customs controlled port, and designated under section 30 as a place where cargo of a specific type, and whether bulk or break bulk cargo, is—

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

“supplementary goods declaration” means a goods declaration in accordance with section 164;

“temporary admission” means the customs procedure, governed by sub-Part G of Part V, whereby goods are imported into Jamaica for temporary use only, and for a specific period;

“temporary export” means the customs procedure governed by sub-Part K of Part V, whereby goods to which that sub-Part applies are exported and returned to Jamaica as goods re-imported in the same state;

“temporary storage” means the storage of goods under customs control, at a place approved by the Commissioner, during the period between the arrival of the goods in Jamaica and the submission to the Commissioner of a goods declaration to clear the goods for a customs procedure;

“the Regulations” means regulations made under this Act;

“transit” means the customs procedure, governed by sub-Part C of Part V, whereby goods are transported under the procedure for national transit described in that sub-Part or the procedure for transit to export described in that sub-Part;

“transport document” means a document (whether in electronic form or otherwise) evidencing a transport contract, issued—

- (a) in a negotiable form; or
- (b) in a non-negotiable form indicating a named consignee;

“trans-shipment” means the customs procedure, governed by sub-Part D of Part V, whereby goods are transferred, under customs control, from the means of transport by which they were imported to the means of transport by which they are to be exported, within the area of the same customs office;

“traveller” means any person who, by any means of transport enters or leaves—

- (a) Jamaica; or

(b) the territory of a foreign country,
excluding the crew of any vessel or aircraft;

“Tribunal” means the appropriate body having jurisdiction under the *Revenue Appeals Division Act* to hear the appeal concerned;

“unaccompanied baggage” means goods—

- (a) transported as cargo, whether or not carried on the same means of transport on which the declarant enters or exits Jamaica or on another means of transport that enters or exits Jamaica before or after the declarant; and
- (b) not physically with the person at the time when the person is processed through customs at the place of entry into or exit from Jamaica;

“unaccounted”, in relation to goods, means a shortfall in goods according to any documents or records relating to the goods, which cannot be ascribed to the destruction or loss of, or damage to, the goods;

“vehicle” means—

- (a) a vehicle as defined by the Road Traffic Act;
- (b) any animal being used as a means of conveyance;
- (c) any mode of conveying goods or persons, not referred to in paragraph (a) or (b), excluding vessels or aircraft; or
- (d) any combination of vehicles included in paragraph (a), (b) or (c);

“vessel” means—

- (a) a craft of any kind, capable of moving in, or under, water, whether self-propelled or not;
- (b) a hovercraft; or
- (c) any floating structure, whether moored or not,

including the fittings and furnishings of such craft or structure and any apparatus or equipment fitted to such craft or structure;

“warehouse” means a customs private bonded warehouse, a customs public bonded warehouse, or a Government warehouse;

“warehouse keeper” means the owner or occupier of a warehouse;

“warehoused” means deposited in a warehouse;

“warehousing procedure” means the customs procedure, governed by sub-Parts E and F of Part V, whereby imported goods are stored under customs control in a designated place pending the payment of import duty or tax;

“wreck” has the meaning assigned to it by the *Shipping Act*.

(2) A requirement under this Act for the taking of an account in respect of goods, shall be construed as requiring the person responsible for taking the account to record such information as may be prescribed by Rules, in such form as may be prescribed by Rules.

PART II—*Customs Duty*

Sub-Part A—Imposition and Assessment

3.—(1) It shall be lawful for the House of Representatives to from time to time, by resolution, amend the First Schedule to—

Imposition
of Customs
Duty.

- (a) impose import or export duty upon any goods that may be imported into or exported from Jamaica;
- (b) increase, reduce, revoke, or otherwise alter, any such duty; and
- (c) provide for the importation, or exportation, of any goods without the payment of duty.

(2) Notwithstanding subsection (1), no import duty shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by—

- (a) a registered charitable organization, and shown to the satisfaction of the Commissioner to be required for a charitable purpose of that organisation;

- (b) any person and shown to the satisfaction of the Commissioner to be required for a charitable purpose or other approved purpose, according to such criteria as the Regulations shall prescribe; or
 - (c) the University of the West Indies, and shown to the satisfaction of the Commissioner to be required for the use of the University.
- (3) Subsection (2)(a) shall not apply to a motor vehicle.
- (4) In this section—
- (a) “charitable purpose” shall be construed in accordance with the definition of “charitable purpose” under the *Charities Act*; and
 - (b) “registered charitable organization” shall be construed in accordance with sections 14 and 14A of the *Charities Act*.

Interim
orders.

4.—(1) Notwithstanding anything set out in section 3(1), the Minister may, by order—

- (a) increase or reduce any import or export duty; or
- (b) impose any new import or export duty,

and from the date of publication of an order under this subsection in the *Gazette*, until the expiry of that order, the duty specified in the order shall be payable in *lieu* of the duty payable prior thereto.

(2) Where any duty is reduced by virtue of an order under subsection (1), the person liable to pay the duty shall pay the reduced duty and, in addition, shall deposit with the Commissioner the difference between the duty payable prior to the date of the order and the duty payable under the order.

(3) On the expiry of an order made under subsection (1)—

- (a) the amount of the deposit paid by a person under subsection (2), which exceeds the amount of the duty payable immediately after the expiry of the order, shall be repaid to the person; and

- (b) the amount of duty, paid under the order, which exceeds the amount of duty payable immediately after the expiry of the order shall be repaid to the persons who paid the duty.

(4) An order under subsection (1) shall expire twenty-one days after the date within which it is required to be laid under section 5(1), unless confirmed or amended under section 5(3).

5.—(1) The Minister shall, within twenty-one days after the publication of an order under section 4(1), lay the order before the House of Representatives.

Resolution regarding interim order.

(2) Within the next thirty days on which the House of Representatives sits after the date on which an order is laid under subsection (1), the House shall by resolution confirm, amend or revoke the order.

(3) Where an order is confirmed or amended under subsection (2), the order as confirmed or amended (as the case may be), shall have effect and be read and construed as one with the relevant instrument under which a duty referred to in section 4(1) may be imposed under section 3.

(4) A resolution under this section shall take effect on the date that the resolution is published in the *Gazette*.

6.—(1) The determination as to whether duty is payable in respect of any goods and the assessment of the amount of that duty shall be made with reference to—

Key factors of assessment.

- (a) the tariff classification of the goods;
- (b) the value of the goods;
- (c) the origin of the goods; and
- (d) any other factor regulating the duty, or the calculation of the amount of the duty, payable on the goods.

(2) The determination as to whether tax is payable in respect of any goods, and the assessment of the amount of that tax, shall be made in accordance with the applicable law.

Time at which rate is determined.

7. The rate of duty applicable to goods is the rate applicable to the goods on the date when the goods declaration to clear the goods for a customs procedure is registered in the manner prescribed by Rules, unless otherwise specified by or under this Act.

Notification of duty and tax payable.

8.—(1) All imported goods are subject to the applicable duty and tax.

(2) Where the Commissioner determines that duty and tax are payable in respect of imported goods, the Commissioner—

- (a) shall cause a notification, in prescribed form (in this section referred to as the notification of debt) specifying the amount assessed to be due and payable in respect of imported goods, to be issued to the declarant as soon as practicable after the Commissioner has assessed the amount; or
- (b) may defer issuing a notification of debt notwithstanding that an assessment has been made in respect of the goods concerned, if the Commissioner is satisfied that issuing the notification would prejudice any criminal investigation or prosecution in respect of the goods.

(3) Where a notification of debt is issued under this section—

- (a) the debtor shall cause the debt to be paid within the period prescribed by Rules; and
- (b) the debt is deemed to be overdue if any amount of the debt remains unpaid after the period referred to in paragraph (a).

(4) Interest at the prescribed rate shall accrue on the amount unpaid in respect of an overdue debt.

(5) Where the amount of duty and tax assessed to be payable on goods is equal to the amount stated on the goods declaration submitted by the declarant, the release of the goods to the declarant shall be deemed to be the issue of a notification of debt for the purposes of subsection (2).

9. Upon the application of an importer or exporter of goods, or the declarant, the Minister may, on such terms and conditions as the Minister thinks fit, remit, or refund, in whole or in part the duty on those goods.

Remission or
refund of
duty.

10.—(1) On the application of a declarant, the Commissioner may defer payment of duty payable by that declarant.

Deferment
of duty.

(2) The Regulations shall prescribe—

- (a) the form and manner of an application under subsection (1);
- (b) the maximum period and the maximum amount for which a deferment may be made under subsection (1);
- (c) the terms and conditions subject to which a deferment may be granted, which may include requirements for the provision of security in accordance with Part XII;
- (d) the circumstances in which interest may be charged in respect of deferred payments, and the rate of such interest; and
- (e) any other matters relevant to the deferment of payment.

(3) A deferment under subsection (1)—

- (a) shall be for a specified period of not less than fourteen days, but not exceeding the maximum period specified under subsection (2)(b); and
- (b) may be revoked in such circumstances as may be prescribed.

11.—(1) The person specified in this section to be a debtor in respect of goods shall be responsible for ensuring that all duties and taxes payable in respect of the goods are paid.

Responsibility
for payment
of duty.

(2) In the case of goods being cleared for a customs procedure, the declarant is a debtor.

(3) Any person, other than the declarant, who in connection with the completion of a goods declaration has provided information that leads to an incorrect assessment is also a debtor, if the person concerned knew or ought reasonably to have known that the information was incorrect.

(4) If a condition for temporary relief from customs duty and tax is not fulfilled or observed (as the case may require), the person responsible for the fulfilment or observance of the condition is also a debtor.

(5) If an obligation imposed by or under this Act in connection with—

- (a) the importation, exportation, transportation, storage or disposal of goods;
- (b) the removal of goods from customs control;
- (c) the placing of goods under a customs procedure; or
- (d) the granting of an exemption from duty and tax, or the application of a reduced rate of duty and tax,

is not complied with, the person responsible for complying with the obligation is also a debtor.

(6) A person who has—

- (a) acquired or stored goods in respect of which a condition or obligation referred to in subsection (4) or (5) is not fulfilled, observed or complied with (as the case may be); or
- (b) aided or abetted in the failure to fulfil, observe or comply with a condition or obligation referred to in subsection (4) or (5),

is a debtor, if that person knew or ought to have known of the failure to fulfil, observe or comply.

(7) Where, pursuant to an international treaty to which Jamaica is a party, goods not cleared for home use are forwarded in accordance with customs procedures that provide for the issue of an authorisation for the clearance of goods in Jamaica or another country subject to a guarantee for the payment of duty and tax, the guarantor is a debtor if the goods are dealt with in any manner that breaches the authorisation.

(8) Where under the provisions of this section there are several debtors in respect of a single debt, the debtors shall be jointly and severally liable to the Commissioner in respect of the debt.

(9) For the purposes of—

- (a) subsection (4), the debt is incurred at the moment when the condition concerned fails, or ceases, to be fulfilled or observed;
- (b) subsection (5), the debt is incurred at the moment when the obligation concerned is not, or ceases to be, complied with;
- (c) subsection (7), the debt is incurred at the moment when the authorisation is breached,

or, in any case described in paragraph (a), (b) or (c), where the goods declaration was registered prior to the non-observance, non-fulfilment, non-compliance or breach (as the case may be) at the moment when the goods declaration was so registered.

12.—(1) A person clearing goods for a customs procedure shall— Goods declaration by declarant.

- (a) submit to the Commissioner a goods declaration in the prescribed form and accompanied by such other documents as may be prescribed; and
- (b) pay to the Commissioner the amount of duty and tax payable in accordance with the goods declaration.

(2) A goods declaration submitted in accordance with subsection (1) shall be—

- (a) promptly registered by the Commissioner; and
- (b) deemed to be an assessment by the declarant of the duty and tax payable in respect of the goods concerned.

(3) For the purpose of verifying the accuracy of the particulars contained in a goods declaration registered under subsection (2) or for the purpose of approving an application to amend a goods declaration under section 71, the Commissioner may—

- (a) after examining the goods declaration and the supporting documents submitted with the goods declaration, require the declarant to provide any other information necessary for that purpose;
- (b) examine, and take samples of, the goods concerned.

(4) Subsection (1) does not apply to any category of goods—

- (a) excluded by the Regulations from the requirement to submit a goods declaration;
- (b) in respect of which any provision of this Act provides for the goods to be declared other than in the manner referred to in paragraph (a); or
- (c) exempted by the Commissioner, in accordance with Rules, from the requirement to submit a goods declaration.

Assessment
of duty and
tax by
Commissioner.

13.—(1) Subject to Part VI (expedited clearance and release of goods), the Commissioner may, before releasing goods for a customs procedure, and regardless of whether any goods declaration is made in respect of the goods—

- (a) determine whether duty and tax is payable on the goods; and
- (b) if duty and tax is payable, calculate the amount of the duty and tax payable, and may release the goods after receiving, either payment of the relevant duty and tax, or security for such payment in accordance with Part XII.

(2) The Commissioner shall assess duty and tax on goods for the purposes of subsection (1) in accordance with section 6 and, where a declaration in accordance with section 12 has been submitted in respect of the goods, the Commissioner shall either—

- (a) adopt the declarant's assessment as the Commissioner's own assessment; or
- (b) substitute, for the declarant's assessment, the Commissioner's own assessment of the duty and tax payable.

(3) Where no goods declaration is submitted in respect of goods, the Commissioner may, before making an assessment under this section—

- (a) direct the person who appears to the Commissioner to be responsible for the goods to—
 - (i) submit a goods declaration in respect of the goods; and

- (ii) pay to the Commissioner the duty and tax payable under that goods declaration; or
- (b) where the Commissioner determines that it is not practicable to require the submission of a goods declaration, proceed to make the assessment—
 - (i) as at the date of the importation; or
 - (ii) if the date of importation cannot be ascertained, as at such date as the Commissioner considers to be the approximate date of the importation.
- (4) If the amount of duty and tax assessed by the Commissioner under subsection (2) in respect of goods—
 - (a) exceeds the amount of duty and tax already paid in respect of the goods, the excess shall be payable to the Commissioner within the time specified by Rules; or
 - (b) is less than the amount of duty and tax already paid in respect of the goods, the person who paid the duty and tax is entitled to a refund of the excess in accordance with sub-Part C of this Part (refunds and drawbacks).
- (5) No duty shall be payable in respect of goods, if the value of the goods is equal to or less than such amount as may be prescribed.

14.—(1) The Commissioner may make one or more re-assessments of duty and tax on any goods previously assessed by the Commissioner under section 13.

Re-
assessment
by
Commissioner.

- (2) A re-assessment under subsection (1) may be made in respect of goods, whether or not—
 - (a) the goods have been released;
 - (b) the goods are still subject to customs control; or
 - (c) an amount of duty and tax has been paid on the goods.
- (3) In making a re-assessment under subsection (1), the Commissioner is not obliged to reference each of the factors specified in section 6, but may reference any such factor.

(4) If the amount of duty and tax, as re-assessed under subsection (1), exceeds the amount of duty and tax assessed under section 13(2) or under a previous re-assessment, the Commissioner shall be entitled to recover the amount of the excess remaining unpaid after the time specified by Rules, for the payment of the excess.

(5) If the amount of duty as re-assessed under subsection (1) is less than an amount of duty and tax that has been paid by a person liable for the duty following an assessment under section 13(2) or a previous re-assessment, the person who paid that amount of duty and tax is entitled to a refund of the excess in accordance with sub-Part C.

(6) The Commissioner shall give notice of the amount of the duty and tax as re-assessed under subsection (1), and the basis for arriving at that amount, to the person who paid an amount of duty and tax on the goods.

Time limit
on re-
assessment.

15. A re-assessment of duty and tax on goods under section 14 may be made—

- (a) only within the period of—
 - (i) in relation to the value of the goods, two years after the date of registration of the goods declaration in respect of the goods or the payment of the duty and tax in respect thereof, whichever occurs later; and
 - (ii) in any other case, three years after the date of registration of the goods declaration in respect of the goods or the payment of the duty and tax in respect thereof, whichever occurs later; or
- (b) at any time, notwithstanding the period specified in paragraph (a), if—
 - (i) the re-assessment is necessary to rectify an under-payment or non-payment of duty and tax that occurred as a result of fraud, wilful misrepresentation, or the wilful non-disclosure of material facts; or

- (ii) the Commissioner and the declarant agree, before the expiry of that period, to the re-assessment.

16.—(1) For the purpose of an assessment or re-assessment of duty and tax on goods, the Commissioner may request any of the persons specified in subsection (2) to furnish, within a specified period, any documents or other information required by the Commissioner. Request for additional information.

(2) The persons referred to in subsection (1) are—

- (a) the declarant in respect of the goods;
- (b) the importer or any other person concerned with the goods;
- (c) any person who—
 - (i) is, or may be held to be, liable for duty and tax that has or may become payable on goods; or
 - (ii) has paid duty and tax on the goods; or
- (d) the owner of the goods.

(3) For the purposes of subsection (2), “any other person concerned with the goods” includes a reference to—

- (a) an insurance company that has issued a policy of insurance covering the goods in question; and
- (b) any person referred to in section 17G(3) of the *Revenue Administration Act*.

17.—(1) For the purpose of assessing or re-assessing the duty and tax payable on any goods, the Commissioner may use the best information available to the Commissioner in any case where any of the particulars necessary for making the assessment or re-assessment (as the case may be) are not disclosed, or are not sufficiently disclosed, in the goods declaration or any other document supplied to the Commissioner in respect of the goods. Assessment or re-assessment in the absence of sufficient information.

(2) For the purposes of subsection (1), documents are construed as not disclosed, or not sufficiently disclosed, in a goods declaration or other document referred to in subsection (1) if—

- (a) the document is not furnished in accordance with a request under section 16; or

- (b) no goods declaration was submitted and the goods are regarded as goods cleared for home use.

Remedies available to person aggrieved by assessment or re-assessment.

18.—(1) A person aggrieved by an assessment or re-assessment of duty and tax may apply for a review of, or appeal, the assessment or re-assessment in accordance with sub-Part C of Part XI.

(2) In the absence of a re-assessment by the Commissioner, or a contrary decision on an application for review, or an appeal, under sub-Part C of Part XI, an assessment or re-assessment of duty and tax by the Commissioner shall apply as the duty and tax payable in respect of the goods concerned.

Abatement of duty.

19.—(1) Subject to subsection (2), the Commissioner may, in accordance with Rules, permit abatement of duty in respect of imported goods—

- (a) on proof to the satisfaction of the Commissioner that the carrier or insurer of the goods has made an allowance to the importer in respect of damage to the goods; and
- (b) in an amount not exceeding the proportion which such allowance bears to the value of the undamaged goods, calculated in accordance with section 20.

(2) No claim for abatement of duty on account of damage shall be allowed in respect of—

- (a) tobacco, cigars, cigarillos cigarettes, wines or spirits; or
- (b) such other goods as may be prescribed.

Sub-Part B — Valuation of Goods

Determination of value of goods. Second Schedule.

20.—(1) The customs value of goods imported into Jamaica shall be determined in accordance with the provisions of the Second Schedule.

(2) The Minister may, by order subject to negative resolution of the House of Representatives amend the Second Schedule.

(3) Nothing in the Second Schedule shall be construed as restricting or derogating from the power of the Commissioner to enquire

into the truth or accuracy of any document or other information submitted to the Commissioner for customs valuation purposes.

(4) In accordance with the Regulations, the Commissioner may, in respect of goods conveyed into Jamaica by air, reduce the amount of freight charges to be added to the value of goods for the purposes of assessment of duty and tax to such amount, not being less than one-quarter of the amount of the freight charges actually payable on such goods.

(5) Where, in determining the value of goods under this Part, it is necessary to establish the equivalent of any money in Jamaican currency or any other currency, the rate of exchange between those currencies shall be the exchange rate for customs purposes, as determined by the Bank of Jamaica, on the day on which the rate of duty and tax applicable to the goods is determined.

(6) The Commissioner shall, on a written request by—

- (a) the declarant; or
- (b) if there is no declarant, the importer,

in writing inform the declarant or importer (as the case may be) as to the basis on which the customs value of the goods was determined.

Sub-Part C — Refunds and Drawbacks

21.—(1) Subject to section 24 (minimum amount for refund or drawback), on application made in the prescribed form and manner by a person who has paid to the Commissioner any duty, charges, penalty or other sum, the Commissioner shall refund such amount of the payment that—

Refund of
duty and
other sums
paid to the
Commissioner.

- (a) was made as a result of an error in law or fact; or
- (b) is not legally due and payable.

(2) Notwithstanding that an application has not been made by a person under subsection (1), the Commissioner shall, where the Commissioner is aware that a person is entitled to a refund on application under that subsection, make the refund.

(3) Subsection (2) shall not apply in any case where the information which causes the Commissioner to be aware that a person is entitled to a refund, comes to the Commissioner more than three years after the date on which the payment giving rise to the entitlement to the refund was made.

(4) No refund may be granted in respect of any duty, charge, penalty, or other sum, paid in respect of—

- (a) prohibited goods;
- (b) restricted goods, where any condition applicable to such goods has not been complied with;
- (c) goods confiscated under this Act; or
- (d) any matter in respect of which criminal proceedings have resulted in the conviction of the debtor.

(5) A refund of tax paid under this Act shall be made in accordance with the applicable law, and no refund shall be made under this Act where a tax debt is owed under the applicable law.

Circumstances
in which
drawback
may be
given.

22.—(1) Subject to subsection (3), the Minister may by order, subject to affirmative resolution of the House of Representatives, from time to time specify the imported goods that qualify for a drawback in whole or in part, the conditions for giving the drawback, and the period within which goods qualify for a drawback.

(2) An order under subsection (1) may—

- (a) revoke any provision for a drawback under any other law in force before the coming into operation of this section, but shall not affect any entitlement to a drawback granted under any such law before the date on which the revocation takes effect;
- (b) provide for the grant of a drawback in respect of—
 - (i) any goods that qualify for a drawback under any other law; or

- (ii) any case where imported goods on which duty and tax is paid have been replaced by equivalent goods used in the production of exported goods.

(3) Subject to subsection (2) and section 24 (minimum amount for refund or drawback), on the application, in the prescribed form and manner, of a person who paid duty on imported goods, the Commissioner may give the drawback if satisfied that—

- (a) the goods on which the duty was paid, or their compensating products, are exported from Jamaica without going into home use; or
- (b) the goods on which the duty was paid are of an applicable class, kind, quality or quantity (as the case may require) prescribed in an order under subsection (1) as qualifying for a drawback.

(4) A drawback may be granted under subsection (3)(a) or (b) only in accordance with such conditions as may be prescribed in an order made under subsection (1).

(5) Where duty is paid only on a part of a quantity of goods, subsection (3) applies only to such part of the goods as represent the portion on which the duty was paid, and any drawback of that duty shall be reduced proportionally.

(6) No drawback may be granted under subsection (3)(a) unless the exporter, before the export of the goods, or their compensating products, notifies the Commissioner of the intention to claim a drawback when the goods, or their compensating products, are exported.

23.—(1) An application for a refund of—

- (a) duty paid on goods may be submitted to the Commissioner within three years after the date on which payment was made; or
- (b) tax paid under this Act shall be submitted within the time specified in the applicable law.

Time for submission of application for refund or drawback.

(2) Subject to subsection (3), an application for a drawback may be submitted to the Commissioner within the period prescribed in an order under section 22(1).

(3) No drawback shall be paid after the expiration of two years, or such longer period as the Minister may allow, after—

- (a) the date of registration of the goods declaration in respect of which the drawback is sought; or
- (b) in the case of goods exported or loaded on a vessel or aircraft for use as stores, the date on which the goods are exported or loaded, as the case may be.

(4) In any case where, under any customs law, an application for review, or an appeal, is made in respect of the payment of duty and tax, and on the determination of the review or appeal a person becomes entitled to a refund of all or any part of the amount of the payment, that refund shall be paid.

Minimum amount for refund or drawback.

24. The Minister may prescribe the amount below which no refund or drawback may be granted under this sub-Part, in any case where the Minister determines that the cost of administration in respect thereof exceeds the amount of the refund or drawback.

Recovery of refund or drawback, by Commissioner.

25. The Commissioner shall recover any refund or drawback given under this sub-Part, from the person to whom it was given, if payment of the refund or drawback—

- (a) was made as a result of an error in law or fact; or
- (b) is not legally due and payable,

and any amount so recoverable is a debt due to the Consolidated Fund.

Set-off of amounts owed.

26.—(1) When a refund, drawback or other payment becomes payable by the Commissioner to a person who has failed to pay an amount due and payable to the Commissioner under any customs law—

- (a) in respect of any duty, fees, penalties or other charges; and
- (b) in respect of which the time allowed for payment under the customs laws has expired,

the Commissioner may set-off the amount of the refund, drawback or other payment (as the case may be) against the amount due and payable to the Commissioner by the person.

(2) If the Commissioner makes a set-off under subsection (1), the Commissioner shall give the person who would have been entitled to receive the amount of the refund, drawback or other payment (as the case may be) written notice of—

- (a) the amount of the refund, drawback, or other payment, that has been set-off; and
- (b) if the amount set-off is less than the amount for which the person is liable as described in subsection (1), the amount for which the person is still liable,

and shall include an accounting as to how the amounts are arrived at.

PART III—*Customs Control*

Sub-Part A — Customs Ports

27.—(1) The Minister may by notice published in the *Gazette*, subject to such conditions as the Minister thinks fit, appoint any place to be a customs controlled port. Customs controlled ports.

(2) No place shall be used as a customs controlled port unless security is given in accordance with Part XII.

(3) No place shall be used as a customs controlled port unless appointed as such under this Act.

28.—(1) The operator of a customs controlled port shall— Obligations of operator of customs controlled port.

- (a) permit an officer at any time to enter upon and inspect that port, and all buildings and goods found there;
- (b) keep a record, in such form and manner and containing such particulars, as may be prescribed by Rules;
- (c) make the records referred to in paragraph (b), together with any other relevant information, available on demand by the proper officer; and

- (d) permit the proper officer to make copies of, and take extracts from, or remove for a reasonable period, the records referred to in paragraph (c).

Customs controlled airport.

29.—(1) The Minister may by order published in the *Gazette*—

- (a) appoint any area in Jamaica constituting, or within, an airport as a customs controlled airport;
- (b) alter the boundaries of any customs controlled airport; and
- (c) impose conditions on the use of any area in Jamaica as a customs controlled airport.

(2) The operator of a customs controlled airport shall ensure that—

- (a) access is given to officers at all times to enter the customs controlled airport and inspect all buildings and goods there;
- (b) records are kept, in such form and manner and containing such particulars as may be prescribed by Rules; and
- (c) the records referred to in paragraph (b), together with any other relevant information, are produced to the proper officer upon demand, and that the officer is permitted to make copies, or extracts, of such records or to remove them for a reasonable period.

(3) For the purposes of subsection (1)(a), “airport” has the meaning assigned to it by the *Civil Aviation Act*.

Designation of places by Commissioner for customs purposes.

30.—(1) Without prejudice to any power exercisable under section 27 or 29, the Commissioner may, by notice published in the *Gazette*—

- (a) designate—
 - (i) any place as an authorised place for the loading or unloading of any class or description of goods (hereinafter referred to as an “approved wharf”); or
 - (ii) any place within a customs controlled port or customs controlled airport as an authorised place

for the embarkation and disembarkation of travellers;

- (b) designate boarding stations within a customs controlled port, for the purpose of the boarding of, or disembarkation from, vessels or vehicles by officers;
- (c) subject to such conditions as the Commissioner considers fit, and for such period as may be specified in the notice, designate as an examination station—
 - (i) any part of, or place at, a customs controlled port or customs controlled airport; or
 - (ii) any place approved under paragraph (a);
- (d) subject to such conditions as the Commissioner considers fit, and for such period as may be specified in the notice, authorise any place to be used as a temporary storage facility for the deposit of goods imported or to be exported;
- (e) to meet the exigencies of any case, designate any other place to be an authorised area for the—
 - (i) entry, unloading, storage, removal, or loading, of goods; or
 - (ii) report and customs processing of aircraft or vessels;
- (f) designate any place to be an authorised place to which goods may be moved under this Act when required to be warehoused by the Government;
- (g) designate any place to be a customs private bonded warehouse, being a place that is to be used, only by specified persons on the written authorisation of the Commissioner, for the storage of goods under the warehousing procedure;
- (h) authorise any place to be used as a customs public bonded warehouse, being a place that may be used by any person for the storage of goods under the warehousing procedure; and

- (i) designate any place to be a customs office.

(2) The Commissioner may grant an authorisation referred to in subsection (1) to a person only if the person—

- (a) provides sufficient assurance to the Commissioner as to the proper conduct of operations at the place concerned; and
- (b) provides security in accordance with Part XII.

(3) For the purposes of subsection (2)—

- (a) a person on whom certified status is conferred under this Act shall be deemed to have met the requirements of subsection (2)(a) if the conduct for which the authorisation is sought is covered by the application in respect of which the certified status was conferred;
- (b) where a comprehensive security is provided, compliance with the obligations attached to that security shall be monitored by the appropriate audits; and
- (c) the conditions subject to which the authorisation is granted shall be set out in the authorisation.

(4) A person to whom an authorisation is granted under this section shall keep records in respect of the operations concerned, in a form satisfactory to the Commissioner, and such records shall contain all information necessary to enable the Commissioner to supervise those operations, and in particular as regards to the identification of goods involved, and the movement and customs status of those goods.

(5) The Commissioner may allow—

- (a) the operator of a facility at which goods are stored pursuant to an authorisation under this section to move goods, held in storage under this Act by that operator, between storage facilities—
 - (i) if the Commissioner is satisfied that such movement will not increase the risk of fraud; and
 - (ii) subject to such terms and conditions as the Commissioner may specify in writing.

(6) The operator of a facility authorised to be used as a temporary storage facility under this section—

- (a) shall, where required to deposit goods in the facility, secure the facility to the satisfaction of the Commissioner; and
- (b) shall not make, or cause to be made, any alteration or addition to the facility without the prior approval of the Commissioner.

31.—(1) The operator of a customs controlled area shall, immediately upon being requested to do so by the proper officer, grant the officer access to the customs controlled area.

Access to customs controlled areas.

(2) Without prejudice to any other action that may be taken under this Act, where the operator of a customs controlled area fails to comply with subsection (1)—

- (a) the proper officer may access the customs controlled area by any means that the officer considers reasonable in the circumstances; and
- (b) the operator is liable for any expense incurred or damage sustained as a result of action taken by the officer under paragraph (a).

32. A person shall not—

- (a) enter a customs controlled area other than in the presence of or with the permission of an officer, or other than as authorised under any law; or
- (b) refuse to leave a customs controlled area, or any part thereof, when requested to do so by an officer, and a person who contravenes this section commits an offence.

Entering or remaining in customs controlled area without permission.

33.—(1) Imported goods come under customs control from the moment the goods are imported until the goods are cleared for free circulation.

Application of customs control.

(2) Goods intended for export come under customs control from the moment the goods declaration for export is registered until the time the goods exit Jamaica in accordance with the customs laws.

(3) The Commissioner shall employ risk management principles in the application of customs controls.

(4) A person commits an offence who—

- (a) conceals goods under customs control, in a manner calculated to deceive the Commissioner;
- (b) without lawful excuse, tampers or interferes with, or destroys, goods under customs control;
- (c) without lawful excuse—
 - (i) removes (whether in whole or in part); or
 - (ii) damages, tampers or interferes with, any thing, knowing or having reasonable cause to know, that the thing is in use by, or for the use of the Customs Agency; or
- (d) without lawful excuse, interferes with or takes possession of, any goods—
 - (i) prohibited from importation or exportation under any law, and under customs control; or
 - (ii) liable to confiscation under any customs law.

Responsibility for goods in customs controlled area.

34. Where goods unloaded from a means of transport are deposited in a customs controlled area, the operator of the customs controlled area is responsible for the goods during the period in which they remain at the customs controlled area.

Provision of facilities at customs controlled areas.

35.—(1) The operator of a customs controlled area shall provide, free of charge, such facilities at that customs controlled area as may be specified by the Commissioner by notice in writing issued to the operator, for officers to exercise their functions under Part XIII in relation to goods and persons there.

(2) It shall be the duty of the owner or occupier of a customs controlled area to provide the Commissioner with such office space and other accommodations, weights, scales and other equipment necessary for examining and taking account of goods at the customs

controlled area, and to secure the goods in accordance with the directions of the Commissioner.

36.—(1) The proper officer may request that the operator of a customs controlled area produce to the officer any goods, deposited at that customs controlled area, which have not been delivered therefrom in accordance with the customs laws.

Production of goods deposited at customs controlled area.

(2) Where the operator of a customs controlled area fails to produce any goods upon a request under subsection (1), the Commissioner shall by written notice to that operator require that the goods be produced to the officer, or that an account to the satisfaction of the officer be given in respect of the goods, within such period of not less than seven days as shall be specified in the notice.

(3) An operator of a customs controlled area, who fails to comply with a notice under subsection (2) commits an offence and shall, in addition to the applicable penalty for the failure, be liable for the duty and tax in respect of the goods.

37.—(1) This section applies to goods removed from a customs controlled area.

Removal of goods intended for exportation.

(2) A person shall not—

- (a) put, or cause goods to be put, on a foreign-going vessel or foreign-going aircraft—
 - (i) otherwise than as permitted or directed by the proper officer; or
 - (ii) in contravention of the Regulations;
- (b) remove goods from a foreign-going vessel or foreign-going aircraft—
 - (i) otherwise than as permitted or directed by the proper officer; or
 - (ii) in contravention of the Regulations; or
- (c) divert goods before they can be placed on board a foreign-going vessel or foreign-going aircraft.

(3) Where a person contravenes subsection (2) in respect of goods—

- (a) the goods shall be confiscated in accordance with section 243; and
- (b) the security given in respect of the goods shall be confiscated notwithstanding that the time specified, in relation to that security, for putting the goods on board a vessel or aircraft, or for warehousing the goods at their intended destination, has not expired.

Permission to remove goods without payment of duty and tax.

38.—(1) The Commissioner may, in accordance with Rules, permit the removal of goods from a customs controlled area before payment of the duty and tax on the goods is made—

- (a) if the removal is for a purpose, and for a period, which appears to the Commissioner to be expedient; and
- (b) in such quantities, and subject to such conditions (if any), as shall be specified, and the conditions may include the giving of security in accordance with Part XII.

(2) If goods are dealt with in any way contrary to any permission given or condition imposed under subsection (1), the Commissioner may, in accordance with Rules, demand immediate payment of the duty and tax payable in respect of the goods or enforce any security given therefor.

Unlawful removal of goods from customs controlled area.

39.—(1) A person commits an offence who—

- (a) takes goods out of a customs controlled area other than as permitted under the customs laws;
- (b) embezzles, misappropriates or unlawfully converts any goods duly warehoused or deposited in a customs controlled area, or unlawfully destroy any such goods; or
- (c) aids or abets any act mentioned in paragraph (a) or (b).

(2) Subject to subsection (3), where goods are taken out of a customs controlled area other than as permitted under the customs

laws, the operator of the customs controlled area shall be liable for the duty and tax upon the goods and shall make payment thereof to the Commissioner.

(3) Where the person convicted of an offence of contravening subsection (1) is an officer—

- (a) the operator of the customs controlled area shall not be liable for the duty or tax unless the removal of the goods is attributable to the negligence, or any wilful act, of the operator; and
- (b) with the consent of the Minister, the Accountant-General shall cause the declarant or, if there is no declarant, the importer or exporter of the goods, to be compensated, for any damage sustained by reason of the commission of the offence.

*Sub-Part B — Entry and Exit of Means of Transport,
Goods, and Persons*

40.—(1) Except as otherwise provided pursuant to section 46, a Master of a foreign-going vessel or foreign-going aircraft who permits the vessel or aircraft (as the case may be)—

Entry and
exit of
vessels and
aircraft.

- (a) upon entering Jamaica, or while in Jamaica, to call or land at any place other than a customs controlled port or customs controlled airport; or
- (b) to depart Jamaica from a place other than a customs controlled port or customs controlled airport,

commits an offence.

(2) Vessels or aircraft that enter, pass through, and exit the territorial waters or airspace of Jamaica without calling or landing at a place in Jamaica, and all goods and persons on board such vessels or aircraft, are subject to customs control until they exit the territorial waters, contiguous zone or airspace (as the case may be) of Jamaica.

(3) For the purposes of this Act, as regards vessels and aircraft that enter, pass through, and exit the territorial waters, contiguous zone or airspace of Jamaica as described in subsection (2)—

- (a) the persons on board such vessels or aircraft shall not be subject to the customs processing requirements of this Act for entry and exit; and
- (b) such vessels or aircraft, and goods on board such vessels or aircraft, shall not be subject to the customs processing requirements of this Act for entry and exit.

(4) Subsection (3) does not apply to goods or persons that do not remain on board, or that are taken on board, a vessel or aircraft during its passage through the territorial waters or airspace of Jamaica.

(5) It shall be a defence to a charge of contravening subsection (1) for the carrier to show that—

- (a) the entry into, or exit from, Jamaica was due to a forced call or landing; and
- (b) the carrier, as soon as reasonably practicable—
 - (i) notified the Commissioner, using such means as are prescribed under subsection (6), of the place of entry or exit (as the case may be); and
 - (ii) took all reasonable precautions to prevent a contravention of the customs laws, and in particular as regards the loading or off-loading of persons or goods, at the place of entry or exit.

(6) The Commissioner shall prescribe the procedure to be followed (including the means of notification referred to in subsection (5)) in the event of a forced call or landing by vessels or aircraft, for the securing of persons, goods and means of transport so as to prevent a contravention of the customs laws.

(7) In this section and section 43 “forced call or landing” means any entry into, or exit from, Jamaica by a vessel or aircraft due to circumstances beyond the control of the carrier (such as adverse

weather conditions, or any other condition which poses an imminent threat to safety).

41.—(1) Imported goods, or goods destined for export, shall not be off-loaded from, or loaded onto, any foreign-going vessel or foreign-going aircraft, except at a customs controlled port, customs controlled airport or other area designated under this Act as a place for loading, or unloading, foreign-going vessels or foreign-going aircraft. Entry and exit of goods.

(2) The Commissioner may, subject to any other authority provided for by law, give reasonable directions as to the particular part of any customs controlled port or other customs controlled area where foreign-going vessels or foreign-going aircraft shall moor or discharge their cargo.

(3) Except as permitted by the Regulations, or with the written permission of the Commissioner—

- (a) a person shall not unload, remove, or transfer goods from any means of transport arriving from a place outside Jamaica, unless authorisation therefor is given by the proper officer;
- (b) goods unloaded at any customs controlled port from a foreign-going vessel or foreign-going aircraft into any vessel to be landed shall not be loaded into any other vessel before being landed, but shall be taken to an approved place of unloading, or a sufferance wharf approved by the Commissioner for that purpose, within the same port;
- (c) except as provided in paragraph (a), a person shall unload goods from a foreign-going vessel or foreign-going aircraft arriving from a place outside of Jamaica, only at a place of unloading, or sufferance wharf, approved by the Commissioner for that purpose, and immediately upon being landed the goods shall be—
 - (i) retained at the place of unloading or sufferance wharf; or
 - (ii) conveyed into a customs controlled area, or to a Government warehouse if so required by the Commissioner;

- (d) a person shall not remove goods from any part of a customs controlled area or a Government warehouse unless authority for their removal has been given by the proper officer;
- (e) a declarant in respect of goods released for a warehousing procedure shall remove the goods in such manner and within such time as the proper officer shall direct subject to the declarant giving security in accordance with Part XII.

(4) The activity permitted by subsection (1) shall be in respect only of goods that have been duly reported in accordance with the requirements of this Part, and goods that have not been so reported shall not be unloaded from, or loaded onto, a foreign-going vessel or foreign-going aircraft arriving from a place outside of Jamaica, except for goods for the consumption or use of the crew or passengers under such conditions as may be provided for in Rules, or as may be directed by the Commissioner in a particular case.

(5) A person who unloads, removes, or transfers, goods from a foreign-going vessel or foreign-going aircraft, other than in accordance with this section, commits an offence.

Expenses of
safeguarding
goods.

42.—(1) Until the expenses chargeable under subsection (2) are recovered from the carrier, or from the owner of the goods, the proper officer may detain a vessel or aircraft—

- (a) where any goods intended to be imported—
 - (i) remain on board the vessel or aircraft longer than such period after the arrival of the vessel or aircraft in Jamaica as is prescribed by Rules, or such longer period as the Commissioner may allow; and
 - (ii) measures are taken to secure the goods on the vessel or aircraft;
- (b) where in any circumstances goods referred to in paragraph (a) are removed to a Government warehouse; or
- (c) where owing to any vessel or aircraft—
 - (i) becoming derelict; or

- (ii) being driven, or brought into, Jamaica under legal process or stress of weather, it becomes necessary to station an officer, on board or otherwise, to secure the goods for the proper enforcement of the customs laws.

(2) For the purposes of subsection (1)—

- (a) the expenses chargeable shall be at such rate as is prescribed by Rules;
- (b) the expenses chargeable under paragraph (a)—
 - (i) shall be such expenses as are incurred after the period applicable under subsection (1)(a) has elapsed; and
 - (ii) include the cost of—
 - (A) removing the goods to a Government warehouse; and
 - (B) safeguarding the vessel or aircraft.

43.—(1) No person shall embark or disembark from a foreign-going vessel or foreign-going aircraft—

Entry and exit of persons.

- (a) except at a customs controlled port or customs controlled airport; and
- (b) the person shall not leave the customs controlled port or customs controlled airport until the person is processed by the proper officer,

or by such means and in such manner as may otherwise be prescribed, and a person who contravenes this subsection commits an offence.

(2) A carrier of a vessel or aircraft referred to in subsection (1) who permits a person to embark or disembark in contravention of subsection (1) commits an offence.

(3) Nothing in subsection (1) or (2) shall be construed as rendering a person liable to criminal proceedings in respect of any entry into, or exit from, Jamaica at a place that is not a customs controlled

port or customs controlled airport, due to circumstances outside of that person's control, such as a forced call or landing (as defined by section 40(7)).

(4) A person arriving in or departing from Jamaica shall make to the Commissioner a goods declaration—

- (a) in such form and containing such information as may be prescribed in the Regulations; and
- (b) in such manner as may be prescribed by the Commissioner under subsection (6).

(5) A declarant under subsection (4) shall furnish the Commissioner, when requested to do so, with full particulars concerning declared items, including any available invoices and any other documents relating to those items.

(6) The Commissioner may make rules for the purpose of facilitating the customs processing of persons arriving in and departing from Jamaica and, without prejudice to the generality of the foregoing, such rules shall prescribe the customs processing systems which apply for different categories of persons and goods.

(7) The items in the accompanied or unaccompanied baggage of a person arriving in Jamaica shall be cleared for the customs procedure appropriate in the particular case.

Entry or exit in contravention of requirements. **44.**—(1) The Commissioner may, in the case of a contravention of section 40, 41 or 43, assess duty and tax on any goods concerned in the contravention as though the goods were declared and released for home use.

(2) This section applies without prejudice to any criminal or civil proceedings that may be instituted, penalty that may be imposed, or any other steps that may be taken by the Commissioner, in respect of the contravention concerned.

Departing without permission. **45.**—(1) A carrier of a vessel or aircraft commits an offence if the carrier causes or permits the vessel or aircraft to depart Jamaica without—

- (a) receiving permission to depart from the proper officer; and

(b) satisfying such conditions as may be prescribed by Rules.

(2) The permission granted under subsection (1) may, on the application of the carrier, subject to such conditions as may be prescribed by Rules, be a general permission to depart on two or more occasions.

(3) The procedure applicable under Part X to the suspension and revocation of authorisations shall apply to the grant of a general permission under this section.

46. The Minister may make regulations providing for the entry, exit, reporting and customs processing requirements in respect of any category of vessels or aircraft, including military vessels or military aircraft, small vessels, and vessels or aircraft for private use. Exemptions and exclusions.

Sub-Part C—Reporting Requirements for Vessels and Aircraft

47.—(1) The Commissioner may, by notice in writing, require a carrier to submit to the Commissioner all information specified in the notice, being information— Passenger information.

- (a) that is included in the passenger name record of a person referred to in subsection (2); and
- (b) that the carrier holds, whether in Jamaica or elsewhere, or has access to, and a carrier who fails to comply with the notice commits an offence.

(2) The persons referred to are persons who—

- (a) have arrived in, or departed from, Jamaica on or after the specified date;
- (b) are arriving in, or departing from, Jamaica on or after the specified date; or
- (c) are intending to arrive in, or depart from, Jamaica on or after the specified date,

on board the vessel or aircraft.

(3) Where information is required in respect of a date under subsection (2), the information shall be provided to the Commissioner within the time specified by Rules.

(4) For the purposes of this section, “the specified date” is the date specified in the notice.

(5) A notice under subsection (1) may specify—

- (a) the form and manner in which the information is to be provided; and
- (b) any relevant additional information to be supplied.

(6) For the avoidance of doubt, nothing in this section requires a carrier to provide information that the carrier holds, or has access to, about an employee unless the information is of a kind that is also generally held by the carrier, or to which the carrier generally has access, in relation to its passengers.

(7) The Commissioner shall not retain information provided under this section for longer than the prescribed period, unless—

- (a) all identifying particulars are deleted from the information; or
- (b) the retention of the information is required for the purpose of—
 - (i) investigating and prosecuting an offence under this Act or any other enactment; or
 - (ii) national security.

(8) In this section, “passenger name record” means the travel information in the carrier’s departure control and reservations system, as relates to the person.

Exemptions. **48.** The Commissioner may, by notice in writing, subject to such terms and conditions as the Commissioner thinks fit, exempt a carrier from complying with some or all of the obligations under section 47, if satisfied that—

- (a) circumstances exist which would render compliance with such obligations by the carrier unlawful under the laws of the country where the carrier is established; or
- (b) compliance with such obligations would be contrary to an international agreement to which Jamaica is a party.

49.—(1) For the purposes of—

- (a) customs processing of persons under this Act; or
- (b) monitoring the movement of any vessel or aircraft, and goods and persons aboard vessels or aircraft,

Collection of
travel
information
by
Commissioner.

in order to enforce the customs laws, the Commissioner may collect any information referred to in subsection (2).

(2) The information referred to in this subsection is—

- (a) information from the carrier as to the details of the movements of the vessel or aircraft;
- (b) information from a person arriving in or departing from Jamaica, as to the person's name, date of birth, sex, passport number, nationality and travel movements, and any other relevant information pertaining to the person's identification or the person's movements while in Jamaica.

50.—(1) A carrier of a vessel or aircraft shall, before arrival of the vessel or aircraft in Jamaica or before its departure from Jamaica, as the case may be, submit to the Commissioner in the prescribed form and manner a declaration that includes the following information—

Advance
arrival and
departure
information.

- (a) the estimated time of the arrival or departure of the vessel or aircraft;
- (b) the customs controlled area at which the vessel or aircraft will arrive or depart, as the case may be;
- (c) a list of the cargo for discharge within Jamaica, or for loading in Jamaica, by the vessel or aircraft;
- (d) a list of the cargo on board the vessel or aircraft, that is not intended for discharge in Jamaica;
- (e) a list of the cargo on board the vessel or aircraft, that is intended for discharge in Jamaica for subsequent trans-shipment;
- (f) a list of all passengers and crew on board the vessel or aircraft;

- (g) a list of all stores on board the vessel or aircraft, including stores in the personal possession of crew members; and
- (h) any other information prescribed by Rules for the purposes of this section,

and a carrier who fails to comply with this subsection commits an offence.

(2) Subject to subsection (3), the information specified in subsection (1) shall be submitted within the time prescribed by Rules.

(3) The Rules shall exempt a carrier from the requirement to submit the information in the time required by subsection (2) if—

- (a) the distance from Jamaica to the port of departure of the means of transport concerned does not permit the carrier to provide the information within the time specified in subsection (2); or
- (b) due to any other circumstances outside of the control of the carrier, the carrier is unable to provide the information within the time specified in subsection (2),

and those Rules shall require the carrier to comply with such alternative arrangements as the Commissioner shall establish for the provision of the information in the particular case.

(4) If the information required under subsection (1) or (3) is submitted by electronic means, the Commissioner shall ensure that a receipt is generated and transmitted by electronic means to the person who sent the information.

(5) In the case of goods that are shipped in bulk, the information required under subsection (1) shall, unless otherwise permitted by the Commissioner, be provided before bulk is broken and shall specify separately all goods that—

- (a) are in transit;
- (b) are the subject of trans-shipment; or
- (c) do not fall within paragraph (a) or (b).

(6) Where information required under this section is not submitted as required, the Commissioner may withhold permission to depart from Jamaica until the date—

- (a) when the information is submitted to the Commissioner; and
- (b) when the applicable penalty for non-compliance with the requirement to provide the information is paid.

51.—(1) The operator of a customs controlled port or other customs controlled area at which a vessel or aircraft arrives or departs, as the case may be, shall report to the Commissioner the fact of the arrival into, and the fact of the departure from, Jamaica of the vessel or aircraft, and an operator who contravenes this subsection commits an offence.

Report of arrival and departure.

(2) A report of arrival or departure under subsection (1) shall be submitted within such time as is specified by Rules.

52.—(1) If on receipt of a declaration submitted under section 50(1), the Commissioner is of the view that the cargo contains any goods referred to in subsection (2), the Commissioner shall, by notice to the reporting carrier or that carrier's agent, warn the carrier—

No-loading notice.

- (a) not to load those goods on board the vessel or aircraft or transport the goods to Jamaica;
- (b) that, should the goods be loaded or transported contrary to the warning, the goods will be detained on arrival in Jamaica and dealt with in accordance with the applicable provisions of the customs laws; and
- (c) that any expense incurred by the Commissioner in dealing with those goods shall be paid by the carrier or the carrier's agent.

(2) The goods referred to are—

- (a) prohibited goods;
- (b) restricted goods in respect of which the enactment regulating the import of those goods has not been complied with;

(c) any other kind or category of goods as is prescribed.

Out-turn
reports.

53.—(1) An out-turn report required to be submitted under subsection (2) or (3) shall specify in relation to the goods concerned—

- (a) the list of cargo loaded or unloaded that exceeds or is less than the cargo listed in the advance declaration submitted under section 50, including the number of goods which are less or greater in number than the number stated in the advance declaration; or
- (b) that the goods are fully accounted for as set out in the advance declaration submitted under section 50,

as is appropriate to the case.

(2) The following persons shall submit an out-turn report to the Commissioner, in respect of cargo loaded into a vessel or unloaded from a vessel—

- (a) in the case of containerized cargo, the operator of the container terminal; and
- (b) in the case of break bulk cargo, bulk cargo and containerized cargo, the operator of the wharf,

where the cargo is, as the case may be, loaded or unloaded.

(3) Where cargo is loaded or unloaded from an aircraft, the operator of the customs controlled area where the cargo is loaded or unloaded, as the case may be, shall submit an out-turn report to the Commissioner.

(4) A person required to submit an out-turn report under this section shall submit the report within such time as shall be specified by Rules, being a time no later than forty-eight hours after the cargo is loaded or unloaded, as the case may be, from the vessel or aircraft, and if the person fails to do so the person commits an offence.

(5) An out-turn report shall show separately any cargo for which no transport document has been received.

54.—(1) The following information in respect of consolidated cargo arriving in or departing from Jamaica shall be reported to the Commissioner by the cargo aggregator—

Information from cargo aggregator.

- (a) the estimated time of arrival or departure, as the case may be;
- (b) the customs controlled area where the cargo will arrive in, or depart from, Jamaica (as the case may be);
- (c) a list of the cargo that is to be off-loaded in Jamaica, or (as the case may be) that is to be loaded in Jamaica;
- (d) a list of the cargo that is intended for discharge in Jamaica for subsequent trans-shipment; and
- (e) any other information prescribed by Rules.

(2) The information referred to in subsection (1) shall be reported to the Commissioner within such time as shall be specified by Rules.

(3) Where there is a discrepancy between the quantity of goods specified in a report under this section and the cargo actually off-loaded in Jamaica, or loaded for export, as the case may be, the cargo aggregator shall, within such time as shall be specified by Rules, report the discrepancy to the Commissioner, and a cargo aggregator who fails to do so commits an offence.

55. Information in accordance with section 54 need not contain any details already submitted in—

Declaration and notice where advance report is made.

- (a) the declaration under section 50 in respect of that cargo; or
- (b) any separate notification already given to the Commissioner.

56. Rules may provide for the submission of such additional reports as the Commissioner considers necessary for the effective customs control of cargo imported into or intended to be exported from Jamaica.

Other reports in respect of cargo.

57.—(1) A declaration, notice, report or other document, required to be submitted to the Commissioner under this Part shall be—

Form and manner of submission of, or obtaining, documents.

- (a) submitted in the form and manner prescribed by Rules; and

(b) be accompanied by such supporting documents as may be required under this Act or any other applicable law, and may be amended, within such period as shall be specified by Rules, by the person who made the submission.

(2) Where any time is specified under this Part for the submission of any document, the Commissioner may, in accordance with Rules extend the time allowed for the submission of the document.

(3) Where any document required to be submitted to the Commissioner under this Part may be obtained, or confirmed, by the Commissioner from another competent authority using electronic means, the Commissioner may waive the requirement under this Part for the submission of the information.

(4) In subsection (3) “competent authority” means an authority, in Jamaica or another jurisdiction, which exercises functions—

- (a) analogous to those of the Commissioner; or
- (b) relevant to the information concerned.

Disclosure of information in advance declaration.

58. The Commissioner may, in accordance with Rules, disclose to the operator of a customs controlled area, any information contained in an advance declaration, for the purpose of enabling the operator to make such reports as are required under the customs laws.

PART IV—*Clearance and Release of Goods*

Sub-Part A — Temporary Storage

Temporary storage.

59.—(1) Imported goods shall be placed in temporary storage, in accordance with this sub-Part, from the time of their arrival in Jamaica until released for a customs procedure.

(2) Goods required by this section to be placed in temporary storage may only be deposited at some place, other than a place designated under section 30(1)(d), with the approval of the Commissioner.

Temporary storage declaration.

60.—(1) An advance arrival declaration under section 50, or a report under section 54, submitted in respect of cargo shall be treated as a temporary storage declaration for the purposes of this section.

(2) The provisions of section 12(3) and (4) shall apply to a temporary storage declaration under this section as if the temporary storage declaration were a goods declaration submitted under that section.

61.—(1) Without prejudice to any rights that a declarant may have under this Act to take samples, goods placed in temporary storage shall be subject only to such forms of handling as are designed to ensure the preservation of the goods in an unaltered state without modifying their appearance or technical characteristics.

Handling
etc., of goods
in temporary
storage.

(2) Notwithstanding subsection (1), the Commissioner shall permit such handling of the goods as the Commissioner is satisfied is necessary for securing their removal from temporary storage for further transport.

(3) The operator of the temporary storage facility where goods are stored under this Act is responsible for ensuring that the goods are not removed from temporary storage except in accordance with this Act, and for fulfilling all other obligations applicable to the temporary storage of goods at that place.

(4) Where, for any reason, goods cannot be kept in temporary storage as required under this Act, the Commissioner may without delay exercise any applicable power that the Commissioner may have to deal with the goods (such as destruction, sale or confiscation).

62.—(1) A person other than the Commissioner shall not operate a temporary storage facility for the purposes of this Act unless authorised to do so by the Commissioner.

Authorisation
for operation
of temporary
storage
facility.

(2) The Commissioner may allow the storage of goods released for a customs procedure, in a temporary storage facility, without the goods being regarded as goods in temporary storage, if the Commissioner is satisfied that—

- (a) an economic need exists which justifies such storage; and
- (b) customs supervision will not be adversely affected.

63.—(1) Except as provided in subsection (2), goods placed in temporary storage shall be cleared for a customs procedure, or re-exported, within thirty days after their arrival in Jamaica.

Duration of
temporary
storage.

(2) Trans-shipped goods placed in temporary storage shall be cleared for a customs procedure, or re-exported, within ninety days after their arrival in Jamaica.

(3) Where goods are not cleared as required by subsection (1) or (2), the goods shall be dealt with in accordance with the provisions of this Act applicable to goods at a Government warehouse.

*Sub-Part B — Standard Clearance Processes
and Requirements*

Goods declarations. **64.**—(1) A goods declaration shall be submitted for a customs procedure within the time required by this Act, along with such supporting documents as the Commissioner may reasonably require.

(2) A goods declaration may be either—

- (a) a standard goods declaration;
- (b) a provisional goods declaration;
- (c) a supplementary goods declaration;
- (d) a simplified goods declaration; or
- (e) such other type of declaration as may be prescribed,

in accordance with the provisions of this Act and the Regulations.

Persons who may submit goods declarations. **65.**—(1) A goods declaration may be submitted by any person who is resident in Jamaica and is able to—

- (a) cause the goods to be presented to the Commissioner;
- (b) provide all the information required to clear the goods for or a customs procedure; and
- (c) ensure compliance with the customs laws for the customs procedure.

(2) A person may submit a goods declaration notwithstanding being resident outside Jamaica, in any case where—

- (a) the goods declaration is required under section 43(4) (goods declaration by a person arriving in or departing Jamaica);
- (b) the goods declaration is for transit or trans-shipment, or the temporary admission of the goods;

- (c) the Commissioner considers the submission to be justified in the circumstances; or
- (d) Rules provide for the exemption of the residence requirement in that case.

66. The Regulations may prescribe any class or category of goods to which simplified procedures for clearance and release may apply, and the procedure to be followed for the clearance and release of those goods.

Clearance of imported goods.

67.—(1) Where—

- (a) in respect of any goods a goods declaration is not submitted within the time required under this Act; or
- (b) goods are diverted, the goods may be dealt with in the manner set out in subsection (2).

Failure to submit declaration.

(2) Goods to which subsection (1) refers may—

- (a) be dealt with in accordance with the provisions of this Act applicable to goods in a Government warehouse; or
- (b) be treated as if they were cleared for home use, in accordance with section 87(2).

68.—(1) A goods declaration in relation to imported goods may be submitted to the Commissioner before the arrival of the goods in Jamaica, in accordance with such terms and conditions as may be specified by Rules.

Submission of goods declaration before arrival of goods.

(2) The Commissioner—

- (a) may register, verify, assess and process a declaration submitted under subsection (1) notwithstanding that the goods have not arrived in Jamaica; and
- (b) may, in accordance with Rules, release the goods before they have arrived in Jamaica.

(3) A release under subsection (2) shall be subject to such customs control as may be applicable on the arrival of the goods in Jamaica.

69.—(1) Before goods are delivered to the customs controlled area from which the goods will be exported, a goods declaration in respect of the goods shall be registered within the time specified by Rules.

Clearance of goods destined for export.

(2) No goods shall be exported from Jamaica unless those goods are cleared and released for an export procedure.

(3) The Regulations may prescribe any class or category of goods that are exempt from the provisions of subsection (1), and the procedure to be followed for the clearance and release of those goods.

Failure to
clear goods
for export.

70.—(1) Where goods are delivered to a customs controlled area for export, without any goods declaration having been registered for the export of the goods, the operator of the customs controlled area shall refuse to take delivery of the goods unless permission to take delivery is given by the Commissioner in accordance with section 142(3).

(2) If the Commissioner is satisfied that goods have been exported without any goods declaration having been registered to clear the goods for export, the Commissioner may require the exporter to submit, for registration, a goods declaration in respect of the goods.

(3) Subsection (2) shall apply without prejudice to any penalty or action which may be applicable in respect of the failure to submit the goods declaration.

(4) Goods found at any customs control area, in respect of which no goods declaration is registered, and which cannot otherwise be accounted for, shall be dealt with in accordance with the provisions of this Act applicable to goods in a Government warehouse.

Amendment
of goods
declaration.

71.—(1) If a declarant becomes aware—

- (a) whether before or after the release of the goods in relation to which the goods declaration was made; and
- (b) within three years after the date of registration of the goods declaration, of any incorrect or incomplete information in the declaration, the declarant shall promptly notify the Commissioner thereof.

(2) Where a notification is made under subsection (1), the declarant shall in any case where the goods are still in existence—

- (a) apply to the Commissioner, in the form and manner prescribed by Rules, to amend the declaration; and
- (b) include with the application the correct and complete information.

(3) Subject to subsection (4) a declarant shall be entitled, on approval of an application to do so, to amend any of the particulars furnished in the goods declaration, at any time after the declaration is registered.

(4) Subsection (3) shall not apply—

- (a) to any amendment that would render the goods declaration applicable to goods other than those to which it originally applied; or
- (b) where the application to amend is made after the Commissioner has notified the declarant that—
 - (i) the Commissioner intends to examine the goods; or
 - (ii) particulars of the goods declaration are incorrect.

72.—(1) A declarant may request, in the form and manner prescribed, the withdrawal of the goods declaration in respect of the goods. Withdrawal of goods declaration.

(2) Upon a request made under subsection (1), the Commissioner shall, subject to subsection (3), authorise the withdrawal of the goods declaration if the Commissioner is satisfied that—

- (a) the goods are immediately to be placed under another customs procedure; or
- (b) as a result of special circumstances, the placing of the goods under the customs procedure in respect of which they were declared is no longer justified.

(3) A withdrawal shall not be authorised under subsection (2)—

- (a) until after the goods have been examined, in any case where the Commissioner has notified the declarant that the Commissioner intends to examine the goods; or
- (b) after the release of the goods, unless otherwise provided by Rules.

73. With the approval of the Commissioner, at any time before the release of goods declared for a particular customs procedure, those goods may be declared for another customs procedure. Clearance and release of goods under customs procedures.

Proof of
declaration,
etc.

74.—(1) The Commissioner shall issue to a person who submits a goods declaration under this Act an acknowledgement of receipt therefor, in such form as may be prescribed.

(2) The onus of proving that a goods declaration has been submitted to the Commissioner in accordance with this Act shall lie on the person required to submit the declaration.

(3) A declarant in respect of goods under a customs procedure shall, upon request by the Commissioner, provide proof that the goods have been dealt with in accordance with that customs procedure.

Release of
goods.

75.—(1) No goods shall be released without the goods having been cleared for a customs procedure, unless otherwise provided by this Act.

(2) The Commissioner may refuse the release of goods for a customs procedure if such refusal is necessary for—

- (a) effectively implementing this Act; or
- (b) the protection of public health, the environment, national security or public safety and the agency of Government responsible for the subject matter concerned so requests.

(3) The release of goods in accordance with this section may be made subject to conditions, which may include conditions for ensuring that this Act and any other applicable laws are complied with.

Withholding
release of
goods.

76. The Commissioner may withhold the release of goods for a customs procedure until—

- (a) all pre-conditions, imposed under any law, for the release of the goods have been met;
- (b) the applicable duties, taxes, and charges under this Act have been paid; and
- (c) any security required in respect of the goods has been provided to the Commissioner in accordance with Part XII.

Release
notification.

77. Goods shall be released by the Commissioner for a customs procedure by means of a notification, in a form and manner determined by Rules, issued to—

- (a) the declarant;

- (b) the operator of the customs controlled area at which the goods are located immediately prior to their release; and
- (c) any other person, as the Commissioner considers appropriate for the exercise of any function under this Act or any other customs law,

and in this Act the term “release notification” shall be construed accordingly.

78.—(1) The operator of a customs controlled area commits an offence if that operator delivers goods to any person otherwise than on the authority of a release notification. Delivery of released goods.

(2) A person who accepts delivery of any goods from the operator of a customs controlled area otherwise than on the authority of a release notification commits an offence.

(3) If the operator of a customs controlled area delivers goods otherwise than on the authority of a release notification—

- (a) the person to whom they were delivered shall return the goods to the operator or deliver the goods to such other place as the Commissioner may determine; and
- (b) where the goods are not accounted for, the Commissioner may hold the operator liable for any duty and tax payable on the goods.

(4) Goods released under section 75 for a customs procedure shall, within the period applicable to those goods by provisions made under this Act regulating that procedure, be removed from the place where the goods were released.

79. The operator of a customs controlled area who is in control of goods released under the authority of a release notification shall promptly notify the Commissioner, by such electronic or other means as may be prescribed by Rules, of the delivery of the goods to the person entitled to take delivery of the goods under the release notification, and an operator who contravenes this section commits an offence. Confirmation of release notification and delivery of goods.

Cancellation,
amendment
or
substitution
of release
notification.

80. The Commissioner may, in such circumstances, and in accordance with such procedures as shall be prescribed, cancel, amend or substitute a release notification.

Effect of
release of
goods for
customs
procedure.

81. Goods released for a customs procedure may not be dealt with otherwise than in accordance with the provisions of this Act and all other customs laws.

Samples.

82.—(1) An officer may take samples of any goods under customs control—

- (a) in order to establish or verify—
 - (i) the nature or characteristics of the goods;
 - (ii) the quality or contents of the goods;
 - (iii) the tariff classification, customs value, or origin of the goods; or
 - (iv) any other fact in relation to the goods as may be prescribed by Rules;
- (b) for use as evidence in court or other legal proceedings; or
- (c) for any other purpose as may be prescribed by Rules.

(2) While goods are subject to customs control, the declarant or any person who may submit a goods declaration in respect of the goods may, with the approval of the Commissioner—

- (a) take samples of the goods; or
- (b) perform any other action in relation to the goods as may be permitted by Rules.

(3) An officer—

- (a) may require the declarant or, if there is no declarant, the importer or exporter (as the case may be) to supply, for any of the purposes specified in any of the provisions of subsection

(1)(a) to (c), any samples, illustrations, drawings, plans or other documents relating to the goods, and that person shall comply with the request free of charge;

(b) shall, unless to do so would prejudice the investigation of any crime, give at least twenty-four hours' prior written notice to the person referred to in paragraph (a)—

(i) of the date and time when, and the place where, samples are to be taken under subsection (1); and

(ii) directing the person to attend therefor,

and if the person fails to attend as directed in the notice, the officer may nevertheless proceed to take the samples.

(4) Samples taken of imported goods under subsection (2) before the goods are cleared and released for a customs procedure shall—

(a) if the goods are subsequently cleared for a customs procedure, be treated as included in the quantity cleared for the customs procedure; and

(b) be treated as cleared for home use, if the goods are not subsequently cleared for another customs procedure.

(5) The Government shall not be liable to pay compensation in respect of any sample taken under this section.

83. The Commissioner may at any time cause an account to be taken of any goods under customs control.

Taking of accounts.

84. No action shall lie against the Government or any of its officers for any loss or damage sustained by goods while the goods are in a customs controlled area, or in respect of any wrong or improper delivery of goods from a customs controlled area, except if the loss or damage occurs as the direct result of a wilful act, or any negligence, of any agent of the Government.

Exclusion of liability.

PART V—*Customs Procedures**Sub-Part A—Goods under a customs procedure*

Duration of
customs
procedure.

85. A customs procedure in relation to goods—

- (a) begins when the goods are released for that procedure in accordance with this Act; and
- (b) is completed when all the requirements of that procedure have been complied with.

Transfer of
rights and
obligations in
respect of
goods under a
customs
procedure.

86.—(1) The rights and obligations in respect of goods that are under a customs procedure may be transferred, in whole or in part, to another person with the prior approval of the Commissioner.

(2) The Commissioner shall give approval under subsection (1) if satisfied as to the transferee's ability to comply in terms of subsection (3).

(3) The person to whom a transfer of any rights and obligations in respect of goods that are under a customs procedure is made shall comply with—

- (a) the requirements and conditions applicable to the goods under that procedure; and
- (b) the conditions (if any) imposed by the Commissioner in respect of the transfer,

and if the person fails to do so, the person commits an offence.

(4) Subsection (3) does not affect the liability of the transferor for any duty, tax, charges, penalties or other liability owed to the Commissioner in respect of the goods up to the time of the transfer.

Deemed
clearance.

87.—(1) Imported goods may be treated as if the goods are declared for home use if—

- (a) the goods are dealt with in contravention of any customs law; or
- (b) the goods are damaged, destroyed or unaccounted for, while under that procedure, and the damage, destruction, or failure

to account, as the case may be, is not attributable to a cause prescribed by regulations.

(2) Upon goods being treated as declared for home use by virtue of the operation of the provisions of this Act, the duty and tax payable in respect of those goods may be recovered from the declarant or, if there is no declarant, the importer, in addition to any penalty or sanction, or any other action that may be taken, under this Act or any other customs law.

Sub-Part B—Transportation of Goods

88.—(1) Goods not in free circulation may be transported in or through Jamaica only in accordance with this Act, and a person who transports goods in contravention of this subsection commits an offence.

Procedure for transportation of goods not in free circulation.

(2) Where necessary and without prejudice to any other power exercisable by the Commissioner, the Commissioner may take any steps, or issue any directions, to guard against any unauthorised interference when goods not in free circulation are transported, including—

- (a) affixing any marks or seals to the vehicle or container in which the goods are to be transported;
- (b) stipulating the specific place to which the goods shall be delivered;
- (c) requiring the provision of security in keeping with the provisions of this Act;
- (d) requiring that the goods be transported under the supervision of a customs escort, in any case where the Commissioner determines that such an escort is necessary for the enforcement of the provisions of this Act,

and a person who fails to comply with any such direction commits an offence.

(3) The Rules may prescribe the form of, and circumstances in which, a report in respect of any goods transported under subsection (1) may be required.

Accidents
and other
unforeseen
events.

89.—(1) The carrier or other person transporting goods not in free circulation shall make a report to the Commissioner in the form and manner, and within the time, prescribed by Rules, in respect of the occurrence of any breakdown, accident or other unforeseen event in the course of transporting the goods, which compromises the integrity of the goods, and a carrier or other person (as the case may be) who fails to do so commits an offence.

(2) For the purposes of this section, Rules shall prescribe the circumstances that are deemed to constitute events which compromise the integrity of goods.

Transfer of
goods
between
means of
transport.

90.—(1) Goods may be transferred from a foreign-going vessel or foreign-going aircraft to another means of transport, whether a vessel, aircraft or otherwise—

- (a) in accordance with a customs procedure that allows such transfer; or
- (b) as permitted by the Commissioner in accordance with Rules.

(2) Once the transport of goods that are not in free circulation has commenced, the goods may be transferred from the means of transport in which the goods are transported to another means of transport only—

- (a) in accordance with this Act and the terms and conditions governing the transportation; or
- (b) with the permission of the Commissioner.

(3) A person who transfers goods other than in accordance with this section commits an offence.

Sub-Part C—Transit Procedure

National
transit.

91.—(1) In respect of goods under customs control, the transport of those goods from one customs controlled area to another customs controlled area (hereinafter referred to as national transit) shall be conducted in accordance with the provisions of this Act, the Regulations, Rules and any other applicable customs laws, concerning the transport and sealing of goods under customs control.

(2) The Commissioner may require that security be given, in accordance with the provisions of Part XII, for any goods undergoing national transit.

92. Where goods are imported into Jamaica for the purpose of transport through Jamaica to a customs controlled port or other customs controlled area for export, the goods (in this Act referred to as “transit to export goods”) shall be dealt with in accordance with the procedure for transit to export set out in this Act. Transit to export.

93.—(1) The transportation of goods for the purpose of national transit or transit to export shall not commence until the goods are released for that procedure, and a person who transports goods in contravention of this subsection commits an offence. Transportation of goods.

(2) The transportation of goods under customs control shall commence, and end, at a customs office or such other place as may be permitted or directed by the Commissioner.

(3) A person shall not, without the prior written permission of the Commissioner, redirect goods from any place specified in the goods declaration to be the place at which the transportation of goods commences or ends.

(4) The transportation of goods under customs control shall be carried out in accordance with such terms and conditions as the Commissioner may specify in accordance with Rules.

(5) Where the transportation of goods under customs control ends—

- (a) at a customs controlled area that is not a customs office, the operator of the customs controlled area shall immediately notify the Commissioner in the event of any failure of the goods (or any portion of the goods) to arrive at the area;
- (b) at a customs office, the proper officer shall acknowledge delivery of the goods.

(6) The transportation of goods under customs control is completed when the goods are acknowledged as delivered at the delivery

point indicated in the transit declaration, and upon such completion the carrier in respect of the means of transport, or the declarant, concerned shall, if required by the Commissioner—

- (a) submit to the Commissioner proof, in such form and manner, and within such time as may be prescribed by Rules, that the transit procedure has been completed; and
- (b) comply with such other requirements as may be prescribed by Rules for the purposes of this subsection.

(7) The responsibility for ensuring that the transportation of goods under customs control is carried out and completed in accordance with this Act shall rest with the declarant.

(8) A person who transports or redirects goods in contravention of this section or who fails to comply with subsection (5) or (6) commits an offence.

Use of
transport
document as
goods
declaration.

94. For the purposes of this section and sections 93 and 95, with the approval of the Commissioner, a transport document issued in respect of goods may be submitted to the Commissioner as the goods declaration in respect of those goods, for the purpose of clearance for the relevant procedure, if the transport document contains the information required under this Act to be contained in a goods declaration in respect of those goods.

Sub-Part D—Trans-shipment Procedure

Clearance of
goods for
trans-
shipment.

95.—(1) Goods shall not be transferred for trans-shipment unless the goods are released for trans-shipment.

(2) If imported goods are not trans-shipped within ninety days after their arrival in Jamaica, or such longer period as may be prescribed in the Regulations, those goods shall be dealt with in accordance with the provisions of sub-Part F (goods at a Government warehouse).

(3) The Commissioner may—

- (a) take any steps or issue any directions necessary to identify goods that are subject to trans-shipment procedures and to

guard against any unauthorised interference with the goods while in Jamaica or during the trans-shipment of the goods out of Jamaica; and

- (b) prescribe conditions or specifications to be observed with respect thereto.

(4) A person who transfers goods in contravention of subsection (1) or fails to comply with a direction, condition, or specification, imposed under subsection (3) commits an offence.

96.—(1) Where goods at a customs controlled area are to be loaded on board a vessel or aircraft that will transport the goods out of Jamaica pursuant to a trans-shipment procedure, the following persons shall immediately notify the Commissioner if goods are removed from a customs controlled area for a purpose other than the loading of the goods on board a vessel or aircraft—

Responsibilities for ensuring compliance with trans-shipment requirements.

- (a) the declarant concerned;
- (b) the operator of the customs controlled area.

(2) The report submitted in respect of goods by the operator of the customs controlled area pursuant to section 53 shall, in respect of goods under a trans-shipment procedure—

- (a) declare that the goods to which it relates are trans-shipment goods; and
- (b) reflect all the information prescribed by Rules to be included in a report in relation to such goods.

Sub-Part E—Warehousing Procedure

97.—(1) The Minister may, by notice published in the *Gazette*, declare what type of goods shall not be warehoused under this sub-Part.

Warehousing.

(2) Subject to subsection (1), goods may be warehoused in accordance with this sub-Part and in accordance with such regulations as may be prescribed.

(3) For the purposes of this sub-Part, references to a warehouse keeper include the owner or occupier of a customs controlled area.

(4) Where any goods released into the custody of any person for the purpose of being warehoused—

- (a) are not duly warehoused; or
- (b) which, after being deposited in a customs controlled area or duly warehoused, are, at the instance of any person—
 - (i) removed; or
 - (ii) transferred from one package to another, without the permission of the proper officer,

that person commits an offence.

Payment of
duty and tax
on
revocation of
approval of
warehouse.

98.—(1) Where the Commissioner revokes authorisation for a place to be used as a customs private bonded warehouse or customs public bonded warehouse—

- (a) the Commissioner shall cause a notice in writing of the revocation to be given to the warehouse keeper; and
- (b) as from the date of such notice of revocation, the duty and tax on all goods warehoused therein becomes due and payable, unless within such time as is specified in the notice the goods are exported or are removed to another warehouse.

(2) A notice in writing of a revocation referred to in subsection (1), addressed to the warehouse keeper and—

- (a) affixed to a conspicuous place at the warehouse; and
- (b) published, in a daily newspaper in circulation throughout Jamaica, or by such other means as would reasonably cause the notice to come to the attention of the public,

shall be deemed to be notice thereof to all persons interested in the goods.

(3) Goods on which duty and tax is due and payable under subsection (1) and which have not been exported or removed pursuant to that subsection may be taken to a Government warehouse by an officer and may be sold or otherwise dealt with, and the proceeds applied, as if they were goods which might be sold or otherwise dealt with under section 115.

99.—(1) Goods shall not be warehoused other than in the packages in which they are imported, except as provided in subsection (2).

Goods to be warehoused in import packaging.

(2) Goods that are permitted to be unloaded on the quay or bulked, sorted, lotted, packed or repacked in a warehouse, may be deposited in a warehouse in the packages in which they are contained at the time when an account is taken of them, on the completion of the taking of account.

(3) After goods are warehoused in a customs private bonded warehouse or customs public bonded warehouse, the following actions may be taken only with the permission of the Commissioner—

- (a) any alteration to the goods or the packaging of the goods; or
- (b) any alteration to any mark or number appearing on the packaging of the goods.

(4) A warehouse keeper who contravenes or permits a contravention of this section, and any other person who contravenes this section, commits an offence.

100.—(1) The Commissioner may direct—

Stowage of goods.

- (a) the manner in which goods are to be deposited in a warehouse;
- (b) the part of the warehouse or customs controlled area in which the goods are to be deposited; and
- (c) the manner in which access may be had to the goods, being reasonable access in all the circumstances.

(2) Where a direction of the Commissioner under subsection (1) is not complied with—

- (a) the Commissioner shall send to the warehouse keeper a written notice requiring the warehouse keeper to comply with the directions within a period of seven days (excluding Saturdays, Sundays and public general holidays) from the date of the notice; and
- (b) a warehouse keeper, who fails to comply in accordance with a notice issued to that person, within the period specified in the notice, commits an offence.

Transfer
between
warehouses.

101.—(1) The transfer of goods between warehouses shall be conducted only in accordance with the Regulations.

(2) Notwithstanding subsection (1), the Commissioner may remove goods from one Government warehouse to another Government warehouse, in any manner that the Commissioner considers reasonable.

(3) Where goods are transferred pursuant to this section—

- (a) the person who caused the goods to be transferred shall give security in accordance with Part XII; and
- (b) a record of all goods transferred to and from the warehouse shall be kept by the warehouse keeper, and shall be furnished to the proper officer upon request.

(4) A security under subsection (3) shall not be discharged unless—

- (a) the full duty and tax has been paid on the goods;
- (b) the goods have been accounted for to the satisfaction of the Commissioner; or
- (c) the full duty and tax on such portion of the goods as is unaccounted for has been paid.

(5) Upon arrival of the goods at the warehouse to which they are transferred, they shall be warehoused in accordance with the customs laws.

(6) Notwithstanding subsection (5), on arrival of goods at the warehouse to which they have been transferred, the declarant may without actually warehousing the goods, clear the goods for home use or another customs procedure after the goods are accounted for in accordance with this Act.

102.—(1) The Commissioner may permit warehoused goods to be removed and delivered as stores to—

- (a) a foreign-going vessel; or
- (b) a foreign-going aircraft,

in accordance with sub-Part I of this Part.

(2) Where goods removed for delivery for a purpose specified in subsection (1)—

- (a) are not duly placed on board the foreign-going vessel or foreign-going aircraft concerned;
- (b) are dealt with in contravention of a customs law; or
- (c) are not otherwise accounted for to the satisfaction of the Commissioner,

without prejudice to any penalty that may be applicable, the duty and tax in respect of the goods shall be payable by the person to whom the permission was granted under subsection (1).

103. The duty and tax to be paid when warehoused goods are declared for home use shall not be less than the amount payable on those goods according to the value or quantity thereof (as the case may require) at the time the goods declaration for the warehousing of the goods was registered.

Duty and tax to be paid according to original account.

104. Where imported goods are cleared for the warehousing procedure, the warehouse keeper of the warehouse at which the goods are deposited shall—

Records and accounts.

- (a) take account of the goods, notwithstanding that the goods may have been taken account of on arrival at the quay or elsewhere; and

- (b) keep such records in relation to the goods, and provide such reports and other information thereon, as the Commissioner may require.

Re-
warehousing
in customs
bonded
warehouse.

105.—(1) This section applies only to goods warehoused in a customs private bonded warehouse or customs public bonded warehouse.

(2) Unless re-warehoused in accordance with this section, warehoused goods shall, within one year after the date of release of the goods for warehousing, be cleared for another customs procedure.

(3) Goods that are not re-warehoused or cleared, as described in subsection (2), shall be dealt with in accordance with subsection (9).

(4) The warehouse keeper in respect of goods that are not cleared within the time specified in subsection (2) shall effect the re-warehousing of the goods by taking a new account of the goods and paying the duty and tax found to be payable in respect of any unaccounted for deficiency between the quantity originally warehoused and the quantity found to exist on the taking of the new account, together with the necessary expenses and charges incurred in respect of the taking of account and re-warehousing, but less any allowances permitted under the customs laws.

(5) The re-warehousing of goods under this section shall—

- (a) be done only with the prior approval of the Commissioner; and
- (b) not exceed a period of two years from the date of release of the goods for warehousing.

(6) Notwithstanding subsection (4), the warehouse keeper may, with the prior approval of the Commissioner, dispense with the taking of a new account for the purpose of re-warehousing.

(7) The Commissioner shall grant approval under subsection (6) if the Commissioner determines that the taking of a new account is not necessary because the Commissioner is satisfied that the goods are in the warehouse.

(8) Goods shall not be eligible to be re-warehoused under this section unless the proper officer certifies that the goods are in suitable condition to be re-warehoused.

(9) Where goods—

- (a) required to be warehoused under subsection (4) are not re-warehoused;
- (b) are not eligible to be re-warehoused and are not cleared under subsection (2); or
- (c) are re-warehoused and the time specified under subsection (5) has expired without the goods being cleared for another customs procedure, the goods shall be disposed of pursuant to section 115.

(10) The proceeds of sale (if any) pursuant to a power of disposal under subsection (9) shall be applied in the manner specified in section 122 (application of proceeds of sale).

106.—(1) Notwithstanding anything to the contrary in this Act, and subject to the provisions of the *Excise Duty Act*, the Commissioner may, subject to such conditions as the Commissioner thinks fit to impose either generally or in any particular case, permit goods to be warehoused at a customs private bonded warehouse, or customs public bonded warehouse, for the purpose of being processed, for example by manufacture, repair, sorting, packing, consolidating, or de-consolidating.

Warehousing
for
processing or
manufacture.

(2) Permission granted under subsection (1) may be in respect of goods—

- (a) that are not liable to import duty and tax, or to excise duty and tax;
- (b) on which import duty and tax is payable or has been paid; or
- (c) on which excise duty and tax is payable or has been paid,

in such quantities as the Commissioner may specify.

(3) Goods processed under subsection (1) shall be subject to the provisions of the customs laws applicable to warehoused goods.

(4) Nothing in this section shall be construed as permitting inward processing or outward processing to be carried out other than as permitted under sub-Part L.

Sub-Part F—Government Warehouses

Operation of
Government
warehouse.

107. A place that is designated under section 30(1) (f) to be a Government warehouse shall be operated by the Commissioner, or by another person with the written approval of the Commissioner and subject to such terms and conditions as the Commissioner shall, in accordance with Rules, specify in the approval.

Removal of
goods to
Government
warehouse.

108.—(1) The Commissioner may deposit goods, or cause goods to be deposited, in a Government warehouse, at the expense of the declarant or, if there is no declarant, the importer or exporter (as the case may be)—

- (a) if the goods are imported goods required to be cleared in accordance with this Act and the goods have not been cleared within the time specified under this Act;
- (b) if goods are required, under any customs law, to be exported and the goods have not been exported within the time specified in the applicable law; or
- (c) if those goods—
 - (i) are subject to a lien under this Act;
 - (ii) are detained, seized or confiscated, by the Commissioner, under this Act or any other law; or
 - (iii) for any other reason are required to be secured, by the Commissioner, pursuant to this Act or any other law.

(2) The Commissioner may, for the purposes of subsection (1), determine the Government warehouse to which the goods shall be deposited.

(3) A person who, without the authorisation of the Commissioner, redirects goods to which subsection (1) applies to a place other than a Government warehouse commits an offence.

(4) If goods referred to in subsection (1) are of a kind not permitted by law to be deposited in a Government warehouse, the Commissioner shall deal with the goods under section 119 (urgent sales).

109.—(1) Where—

- (a) goods are required under any of the customs laws to be deposited in a Government warehouse; and
- (b) for any reason, the Commissioner determines that it is undesirable or inconvenient to deposit the goods in a Government warehouse,

Goods deemed deposited in Government warehouse.

the Commissioner may direct that the goods be deposited at some other place, and from the date of such deposit the goods shall be deemed to be deposited in a Government warehouse.

(2) The declarant in respect of goods deposited in a place other than a Government warehouse pursuant to subsection (1) or, if no goods declaration was registered, the importer or exporter (as the case may be), shall pay to the Commissioner such charges as the Commissioner considers reasonable to recover as the expenses for securing the goods and guarding against any contravention of the customs laws in relation to the goods.

110.—(1) Subject to subsection (2), the Commissioner—

- (a) may do all acts which the Commissioner considers reasonably necessary for the proper custody and preservation of goods warehoused at a Government warehouse or deposited at a customs controlled area occupied or used by the Commissioner; and
- (b) shall have a lien on goods in respect of which action is taken by the Commissioner under paragraph (a).

Power to act to secure or preserve goods.

(2) The Commissioner shall not act under subsection (1) unless notice has been given to the declarant or, if there is no declarant,

the importer or exporter (as the case may be), that a specified action is required to be taken by the declarant, importer or exporter (as the case may be) in respect of the goods, and twenty-four hours have elapsed after the giving of the notice, without the specified action being taken.

(3) Where subsection (2) applies, and the Commissioner acts under subsection (1), the declarant or, if there is no declarant, the importer or exporter (as the case may be), shall be liable to pay to the Commissioner such amount, in such time and in such manner as the Commissioner may specify by notice in writing, being the reasonable expenses incurred by the Commissioner in taking the action concerned.

(4) Where the amount specified in a notice under subsection (3) is not paid to the Commissioner in accordance with the notice, the goods concerned may be sold or otherwise dealt with, and the proceeds applied as if the goods were goods that might be sold or otherwise dealt with pursuant to section 115.

(5) The Commissioner may act under subsection (1) before giving the notice under subsection (2), or before the time specified under subsection (2) has elapsed, if the Commissioner is satisfied that immediate action is necessary such that prior notice must be dispensed with.

Charges for
goods in a
Government
warehouse.

111.—(1) The charges applicable in respect of the storage of goods in a Government warehouse shall be prescribed by the Minister by order published in the *Gazette*, being—

- (a) the charges payable for rent at a fixed rate;
- (b) any additional charges in respect of the goods, including where goods require special care or treatment,

and such an order may provide for the type of goods that are exempt from the charges referred to in paragraph (a) or (b).

(2) Rent and additional charges under subsection (1) are—

- (a) payable by the declarant in respect of the goods or, if no goods declaration was registered, the importer or exporter (as the case may be); and

- (b) payable to the operator of the Government warehouse, or to the Commissioner in the case of a Government warehouse operated by the Commissioner.

(3) If goods are sold under section 118 (sale of listed goods) or 119 (urgent sales), any amount owed under subsection (2) to the operator of a Government warehouse may be recovered from the proceeds of the sale, in accordance with section 122.

(4) Where any rent or charge payable under subsection (1) in respect of warehoused goods is not paid to the Commissioner when due and payable, the Commissioner may direct that the goods be sold in accordance with section 121 (manner of sale) or otherwise dealt with in accordance with section 123 (disposal of goods otherwise than by sale).

(5) The power of sale under subsection (4) is without prejudice to any other power or remedy available at law.

112.—(1) Where goods are required to be stored at, or removed to, a Government warehouse, the Commissioner may direct or authorise the operator of the customs controlled area where the goods are located, or any person in physical control of the goods, to—

- (a) retain the goods for a specified period at designated premises; or
- (b) remove the goods to any designated premises.

(2) The provisions of this Act relating to Government warehouses (including sections 84 (exclusion of liability for wrong delivery) and 111 (charges for goods in a Government warehouse)) apply to any premises where goods are retained, or to which goods are removed, under subsection (1), as if those premises were a Government warehouse.

(3) Goods retained at, or removed to, any premises under subsection (1) shall for accounting purposes be recorded in the accounting records of such Government warehouse as may be determined by the Commissioner, being a Government warehouse operated by the Commissioner.

Retention of goods at, or removal of goods to, designated premises other than Government warehouses.

(4) The Commissioner shall give notice to the occupier of premises where goods are retained, or to which goods are removed, pursuant to subsection (1), that—

- (a) subsection (2) applies to those premises for as long as the goods remain on those premises;
- (b) the goods shall be kept secured on those premises in accordance with such laws as apply to goods kept at a Government warehouse; and
- (c) the goods are for accounting purposes recorded in the accounting records of the Government warehouse specified in the notice.

(5) When goods are delivered to any premises in compliance with a direction issued under subsection (1)(b), the occupier of those premises shall notify the Commissioner of the fact of such delivery, and an occupier who fails to do so commits an offence.

(6) If a person to whom a direction or authorisation under subsection (1)(b) is issued fails to give effect to the direction or authorisation to remove the goods to designated premises specified in the direction or authorisation, the Commissioner may, at the expense of that person, remove the goods to the premises.

(7) A person to whom a direction or authorisation is issued under subsection (1)(b) may recover any expenses incurred by that person under subsection (1) or (6) in respect of removing the goods to the designated premises, from—

- (a) the declarant or, if there is no declarant, the importer or exporter (as the case may be); or
- (b) the proceeds of the sale of the goods, in accordance with section 122 (application of proceeds of sale).

(8) A person who, without the permission of the Commissioner, redirects or removes goods from premises designated under subsection (1) commits an offence.

113. The occupier of premises designated under section 112(1), where goods are retained at or removed to, pursuant to a direction or authorisation under that section, shall take all reasonable steps to safeguard the goods against damage, destruction or loss, and if the occupier fails to do so, the occupier commits an offence.

Responsibilities of occupier of premises where goods are kept.

114.—(1) Where any goods that are released for a customs procedure, or that have been sold at public auction pursuant to any customs law, remain in any Government warehouse more than seven days after the date of the release, the Commissioner may impose charges, at such rate as shall be prescribed, for the storage of the goods and may withhold the delivery of the goods until the charges are paid.

Disposal of goods released, sold or reclaimed.

(2) Subsection (1) shall not apply in any case where the Commissioner is satisfied—

- (a) as to the reason for the goods remaining at the Government warehouse; and
- (b) that arrangements are made for their removal as soon as is practicable.

115.—(1) Where the Commissioner intends to dispose of goods pursuant to a power of sale or disposal under this Act, the Commissioner shall publish a list of the goods, in a daily newspaper in circulation throughout Jamaica, and may also publish the list using such other means as the Commissioner considers appropriate to bring the proposed sale or disposal to the attention of the public.

Publication of list of goods for disposal.

(2) The list referred to in subsection (1) shall include a statement in terms of subsection (3) and, if readily available to the Commissioner—

- (a) a description of the goods, including—
 - (i) the quantity thereof; and
 - (ii) the marks and identification numbers on the goods;
- (b) the name of the carrier who transported the goods;
- (c) the transport document number of the goods;

- (d) in the case of imported goods, the date of arrival;
- (e) the date of intended export, in the case of goods to be exported;
- (f) the name of the customs broker or the declarant in respect of the goods; and
- (g) the name of the Government warehouse where the goods are kept or, in the case of goods retained at, or removed to, other premises, the physical address of those premises,

and any other information the Commissioner considers relevant for the purposes of this section.

(3) A list published under subsection (1) shall state that the list serves as public notification that the goods on the list may—

- (a) be sold, or may already have been sold, under section 119 (urgent sales), if that section applies to the goods;
- (b) be disposed of under section 123, if that section applies to the goods.

Claiming goods in, or accounted for, in a Government warehouse.

116.—(1) A person entitled to clear goods deposited in a Government warehouse may, within such time as may be prescribed by Rules, being a time no later than twenty-one days after the date of publication of a list under section 115 in respect of those goods, claim the goods by—

- (a) submitting the goods declaration required under this Act in respect of the goods; and
- (b) complying with such other requirements as are applicable for the release of the goods under the customs laws.

(2) Subsection (1) does not apply in respect of goods that—

- (a) are, or have been, dealt with under section 119;
- (b) have been seized or confiscated; or
- (c) are to be destroyed under any requirement of the customs laws.

(3) Goods shall not be released under subsection (1) unless all claims referred to in section 122(1)(a) to (d) in respect of the goods have been paid.

(4) If the Commissioner releases goods claimed under subsection (1), the person claiming the goods shall cause the goods to be removed from the Government warehouse or other premises where the goods are kept, within seven days after the date of release.

117. The Commissioner shall refuse to deliver any goods claimed or sold from a Government warehouse, for any purpose under this Act, unless proof is given to the officer's satisfaction, that all applicable rents and charges in respect of the matters referred to in section 122(1)(a) to (d) have been paid.

Proof of payment of charges required for delivery of goods.

118. The Commissioner may sell goods, specified in a list published under section 115, after the expiration of twenty-one days following the first publication of the list specifying those goods in accordance with section 115—

Sale of listed goods.

- (a) if the goods were not claimed, released or removed, under section 116 or 125 within the applicable time under those sections; or
- (b) if the goods are confiscated or abandoned goods.

119. Notwithstanding sections 116(1) and 118, the Commissioner may immediately sell goods referred to in section 108(1)(a), (b) or (c)—

Urgent sales.

- (a) if those goods are of a perishable or dangerous nature;
- (b) if the goods are of a kind not permitted by law to be deposited in a Government warehouse; or
- (c) if a delay in the sale of the goods would result in the diminution of their value such that the proceeds would not be sufficient to cover claims referred to in section 122(1)(a) to (d), as may be applicable to the goods.

- Goods excluded from power of sale. **120.** No power of sale under this sub-Part shall apply to goods that pose a risk to public safety, public health or public morals.
- Manner of sale. **121.** Goods may be sold under section 105(9), 111(4), 118 or 119 by the Commissioner, by public auction or private treaty.
- Application of proceeds of sale. **122.**—(1) The proceeds of the sale of goods under this Part shall be applied to pay the following claims in the order indicated—
- (a) first, toward the duties, taxes, penalties, fees and other charges, payable on the goods under this Act or any other law;
 - (b) second, toward expenses incurred by the Commissioner in connection with the goods, including expenses connected with their removal, storage, advertisement and sale;
 - (c) third, toward amounts payable, as rent and charges in respect of the goods, to a Government warehouse or the occupier of premises designated under section 112(1);
 - (d) fourth, toward expenses payable to a person under section 112(7);
 - (e) fifth, toward charges payable to the operator of a customs controlled area;
 - (f) sixth, toward charges payable to a carrier of a vessel or aircraft in connection with the goods.
- (2) Any surplus remaining after all claims under subsection (1) have been met shall be paid to the declarant, or if there is no declarant, the importer or exporter (as the case may be)—
- (a) on written application by that person, in accordance with subsection (3); or
 - (b) if no application is made under paragraph (a) but the Commissioner is able, through reasonable effort, to effect the payment,

and any sums remaining unpaid after one year from the date of the sale of the goods shall be paid into the Consolidated Fund.

(3) An application under subsection (2) shall—

- (a) be supported by proof of that person's claim to the goods; and
- (b) be submitted to the Commissioner within one year after the date of the sale of the goods.

(4) Subsection (2) does not apply to abandoned goods, and any surplus remaining in respect of the sale of such goods after all claims under subsection (1) have been met shall be paid into the Consolidated Fund.

(5) For the purposes of subsection (1)(e) and (f), the operator and carrier concerned shall submit their claims to the Commissioner in such time and manner as shall be prescribed by Rules.

123.—(1) If any goods on being offered for sale on at least two separate occasions are not able to be sold for a sum that is sufficient to pay all claims as provided for in section 122(1)(a), (b), (c) and (d), the Commissioner may—

Disposal of goods otherwise than by sale.

- (a) sell the goods for an amount that is less than that sum; or
- (b) instead of selling the goods dispose of the goods in such manner as the Minister may direct.

(2) Goods disposed of under subsection (1) may be removed from the Government warehouse, or other premises, where the goods are kept, in accordance with the directions of the Commissioner.

(3) Disposal of goods under subsection (1) does not affect the liability of a person responsible under this Act, or any other applicable law, for paying expenses or charges incurred in respect of the goods, including any expenses and charges related to the disposal of the goods.

124. If the purchaser of goods sold under this sub-Part fails to comply with a condition subject to which the goods are sold, within the time applicable to that condition or as may be prescribed by Rules—

Non-compliance with sales conditions.

- (a) the sale becomes null and void;

- (b) the expenses incurred in respect of the sale and the storage and handling of the goods as from the date of the sale, shall be deducted from such amounts as may already have been paid by the purchaser toward the sale price, and shall be non-refundable;
- (c) any surplus arising after the deduction of expenses under paragraph (b) shall be refundable to the purchaser; and
- (d) the goods may be resold under section 123, or disposed of in accordance with section 125 if that section becomes applicable.

Removal of goods following sale.

125.—(1) Goods sold under this sub-Part shall be released for removal by the purchaser from the Government warehouse, or premises, where the goods are kept, if—

- (a) the purchase price is paid; and
- (b) the conditions of sale have been complied with.

(2) If goods released under subsection (1) are not removed within the period specified in section 114—

- (a) the purchaser becomes liable for any amounts incurred under section 111 on the expiration of that period, and the Commissioner may refuse to allow the removal of the goods unless those amounts are paid; or
- (b) section 118 applies to the goods, if the Commissioner so directs.

Duty consequences of sale or disposal under this sub-Part.

126. Duty and tax on imported goods sold under this sub-Part shall be assessed at the rate applicable to goods cleared for home use at the date of the sale.

Sub-Part G—Temporary Admission Procedure

Temporary admission of goods.

127. The Commissioner shall grant permission for the temporary admission into Jamaica of imported goods that are intended to be exported from Jamaica, if the Commissioner is satisfied that—

- (a) at the time of exportation from Jamaica the goods will be identifiable as the same goods that were imported into Jamaica;

- (b) the goods are not intended to undergo any change, other than due to normal depreciation from the use to be made of them; and
- (c) the requirements relating to the importation of the goods, under the customs laws, are met.

128. Where permission is granted for the temporary admission of goods, the declarant shall, prior to the release of the goods, provide security in accordance with Part XII, in respect of the duty and tax payable on the goods and the fulfilment of the obligations of the declarant for temporary admission of the goods.

129. The Minister may prescribe regulations designating the categories of goods that are entitled to total conditional relief, or partial conditional relief, from duty under temporary admission.

130.—(1) Subject to subsections (2) and (3), temporary admission of imported goods may be permitted by the Commissioner, in such circumstances as shall be specified by Rules, for a specified period not exceeding six months from the date of registration of the declaration in respect of the goods.

(2) Before the expiration of the period specified pursuant to subsection (1), the Commissioner may, on the application of the declarant, extend the specified period for such further time as the Commissioner considers appropriate but in any event not exceeding three years from the date of registration of the goods declaration.

(3) Where goods are seized by a servant or agent of the Government—

- (a) the operation of the period specified under subsection (1) or (2), as the case may be; and
- (b) the obligation to re-export the goods,

is suspended for the duration of the seizure.

131.—(1) Goods admitted into Jamaica under section 130 shall, upon a demand made by the Commissioner, be produced or otherwise accounted for, and a declarant who fails to produce or otherwise account for the goods in accordance with the demand commits an offence.

(2) The Commissioner may, for the purpose of ensuring the identification of goods temporarily admitted into Jamaica, affix customs marks.

Proof of re-export of goods under temporary admission. **132.** The burden of proving that goods temporarily admitted into Jamaica were re-exported from Jamaica in accordance with the applicable export procedure and within the period specified under section 130 in relation to the goods shall rest on the declarant.

Contravention of import conditions or failure to re-export within time. **133.—**(1) Where any condition on which imported goods are temporarily admitted is contravened or the goods are not re-exported within the period specified under section 130—

- (a) the goods shall be treated as if they had been declared for home use and the duty and tax in respect of the goods shall immediately become payable; and
- (b) if security was given in respect of the goods, the security shall be enforced,

but the Commissioner may, having regard to any explanation given for the contravention, determine whether none, all, or only a portion, of the duty and tax shall be paid.

(2) Where goods temporarily admitted into Jamaica are exported within the time period specified under section 130, the security given, if any, in relation to the goods shall be refunded or released, as the case may require.

Temporary admission pursuant to international agreement. **134.** Notwithstanding any provision to the contrary, the Commissioner may permit goods to be temporarily admitted in accordance with any applicable international agreement in force as regards Jamaica.

Sub-Part H—Duty-Free Shop Procedure

Application of customs procedures to duty-free shops. **135.** The provisions of this Act apply to duty-free shops except as may otherwise be provided by the *Duty-Free Shopping System Act*.

Sub-Part I—Stores Procedure

136.—(1) Stores that are on board a means of transport when the means of transport enters Jamaica shall, without need for the registration of a goods declaration, be subject to the stores procedure. Application and duration of stores procedure.

(2) No goods may be taken on board a foreign-going vessel or foreign-going aircraft as stores for that vessel or aircraft unless those goods are declared and released for that purpose under the stores procedure.

(3) A person who, in contravention of subsection (2), takes goods on board a foreign-going vessel or foreign-going aircraft commits an offence.

137. The operator of a foreign-going vessel or foreign-going aircraft shall, in the manner prescribed by Rules, acknowledge receipt of all stores taken on board the vessel or aircraft in Jamaica, and an operator who fails to do so commits an offence. Acknowledgement of receipt of stores taken on board.

138.—(1) When a foreign-going vessel or foreign-going aircraft arrives at a customs controlled port or customs controlled airport, an officer may seal or otherwise secure on board the vessel or aircraft any stores that are under the stores procedure, including any stores in the personal possession of a crew member on board the vessel or aircraft. Sealing or securing stores.

(2) Subsection (1) does not apply to stores in the personal possession of a crew member on board a foreign-going vessel or foreign-going aircraft in so far as the quantity of those stores does not exceed such quantity as may be prescribed for the personal use of crew members on board foreign-going vessels or foreign-going aircraft while in Jamaica.

(3) A person who, without the permission of the Commissioner, breaks any seal placed on stores under subsection (1), or interferes with stores otherwise secured under that subsection, before the vessel or aircraft has departed from Jamaica, commits an offence.

(4) The carrier of a vessel or aircraft is responsible for ensuring that no offence under subsection (3) is committed in respect of any stores on board the vessel or aircraft.

Removal of stores from vessel or aircraft.

139.—(1) Stores under the stores procedure may not be removed from a foreign-going vessel or foreign-going aircraft, except where expressly permitted—

- (a) by the Commissioner; or
- (b) under this Act.

(2) The Commissioner may direct or allow any stores under the stores procedure on board a foreign-going vessel or foreign-going aircraft to be removed from the vessel or aircraft for storage elsewhere until the vessel or aircraft is ready to depart Jamaica, if the Commissioner is satisfied that storage elsewhere is necessary.

(3) A person who, in contravention of this section, removes stores commits an offence.

Goods regarded as declared for home use.

140. Where—

- (a) goods are used otherwise than as stores for a foreign-going vessel or foreign-going aircraft; or
- (b) a seal placed on goods under section 138 is broken or goods otherwise secured under that section are interfered with and are subsequently unaccounted for,

duty and tax are payable as if the goods have been declared for home use.

Sub-Part J—Export Procedure

Application of export procedure.

141. Goods shall be brought under the export procedure in any case where it is intended to permanently remove the goods from Jamaica.

Time of delivery of goods to place of export.

142.—(1) Goods shall not be delivered to their place of export unless a declaration in respect of the goods is registered and the Commissioner releases the goods for export, and a person who, in contravention of this section, delivers goods commits an offence.

(2) Goods released by the Commissioner for export shall be delivered to the place for export within such time as may be prescribed by Rules.

(3) Notwithstanding subsections (1) and (2), the Commissioner may, if satisfied that exceptional circumstances so warrant, and subject to such terms and conditions as the Commissioner may impose, permit the—

- (a) delivery of goods to their place of export; or
- (b) export of goods from Jamaica before a goods declaration is registered for the export of the goods.

(4) Where permission for delivery or export is granted to a person under subsection (3), the person shall submit for registration a goods declaration in respect of the goods within twenty-four hours after such delivery or such export, as the case may be.

143.—(1) Goods destined for export may not be loaded onto a foreign-going vessel or foreign-going aircraft unless—

- (a) a declaration is registered in respect of the goods and the goods are released for export under the export procedure; or
- (b) permission is given under this Act for the export of the goods, without the registration of a declaration.

Loading of goods destined for export on foreign-going vessel or foreign-going aircraft.

(2) Subsection (1) does not apply to goods falling within a category of goods excluded under this Act from the requirement for a declaration.

(3) A person who, in contravention of this section, loads goods commits an offence.

144.—(1) Goods destined for export that are on board a foreign-going vessel or foreign-going aircraft shall not be off-loaded, or transferred, to another vessel or aircraft in Jamaica, except—

- (a) in accordance with this Act; or
- (b) with the permission of the Commissioner.

Off-loading of goods destined for export.

(2) A person who, in contravention of this section, off-loads or transfers goods commits an offence.

Failure to
export goods
released for
export.

145.—(1) If goods that are released for export are not exported within such time as may be specified by Rules—

- (a) the declarant shall within twenty-four hours after the time specified for the departure of the vessel or aircraft, notify the Commissioner of—
 - (i) the failure to export the goods; and
 - (ii) the reasons for the failure; and
- (b) the Commissioner may, whether a notification under paragraph (a) has been given or not—
 - (i) secure the goods or require the goods to be secured, in such manner as the Commissioner may determine, pending the export of the goods under the export procedure; or
 - (ii) issue such directions in respect of the goods as the Commissioner considers appropriate.

(2) A declarant who fails to notify the Commissioner as required under subsection (1) commits an offence.

Exemption
from duty
and tax of
goods cleared
for export.

146.—(1) No import duty or tax shall be charged in respect of goods released under security for export to a place outside Jamaica, or for use as ships' stores in accordance with section 136.

(2) Subsection (1) shall not apply in any case where—

- (a) the exporter contravenes any customs law in relation to the goods, or any condition of the security given for the release of the goods; or
- (b) the Commissioner has reasonable grounds to believe that any deficiency in the quantity of the goods has arisen from illegal abstraction therefrom.

(3) In any case falling within subsection (2), the declarant shall be liable to pay—

- (a) in any case falling within subsection (2)(a), the full duty and tax payable in respect of such of the goods as are unaccounted for; or

- (b) in any case falling within subsection (2)(b), duty and tax on such portion of the goods as represents the amount of the deficiency in the quantity of the goods.

Sub-Part K—Temporary Export Procedure

147.—(1) This sub-Part applies to goods if they—

- (a) fall within the prescribed category of goods for which the temporary export procedure may apply; and
- (b) are of a nature that will make them, when eventually re-imported, likely to be identified as the same goods that were exported.

Goods applicable for temporary export procedure.

(2) Notwithstanding any provision to the contrary, the Commissioner may permit goods to be temporarily exported in accordance with any applicable international agreement in force as regards Jamaica.

148. The temporary export procedure begins in relation to goods—

- (a) in the case of goods that automatically come under the temporary export procedure by virtue of section 147 when the goods leave Jamaica; or
- (b) as from the time the goods are cleared and released for outright export, in any case where the temporary export procedure applies retrospectively by virtue of section 149,

Duration of temporary export procedure.

and is completed, unless otherwise terminated under this Act, when the goods are released as goods re-imported in the same state for home use.

149.—(1) Goods may be cleared as goods re-imported into Jamaica in the same state for home use if the Commissioner is satisfied that—

- (a) the goods were previously exported from Jamaica, whether under the temporary export procedure or as goods cleared for outright export;
- (b) the goods are identifiable as the same goods referred to in paragraph (a);

Clearance and release of goods under temporary export procedure.

- (c) while outside Jamaica the goods did not undergo any manufacture, processing or repairs, other than such maintenance in connection with their use outside Jamaica as is necessary due to normal wear and tear; and
- (d) all conditions subject to which the goods were released for export have been complied with.

(2) The Commissioner may prescribe Rules regarding the clearance and release of goods referred to in subsection (1) for home use, and such Rules may provide for—

- (a) the proof to be furnished in support of the matters referred to in subsection (1);
- (b) the information to be furnished where the importer claims a refund or drawback of import duty or other duty or tax reclaimed on the export of the goods; and
- (c) where the matters referred to in subsection (1) are not established to the satisfaction of the Commissioner, the procedure and time applicable for obtaining the release of goods for a customs procedure.

Goods under temporary export treated as cleared for outright export.

150. Goods under temporary export shall be treated as cleared for outright export if—

- (a) the goods are not re-imported within the period, applicable to the goods, specified by Rules;
- (b) the goods upon their return to Jamaica are not declared as goods re-imported in the same state for home use; or
- (c) the Commissioner, upon not being satisfied as to the matters specified in section 149(1), refuses to release the goods as goods re-imported in the same state for home use.

Sub-Part L—Processing Procedures

Inward processing.

151. Goods imported for inward processing shall be transported and stored in accordance with the terms and conditions of the authorisation granted for those goods to be imported for inward

processing and all products obtained from the processing of those goods—

- (a) shall be exported on the completion of the processing for which they were imported; and
- (b) for purposes of such export, shall be stored and transported in accordance with the terms and conditions of the authorisation granted for those goods to be imported for inward processing.

152.—(1) Inward processing shall be conducted in the manner prescribed. Regulations regarding inward processing.

(2) Regulations made for the purposes of subsection (1) shall—

- (a) subject to section 155, specify the conditional relief from import duties that may be granted in respect of goods imported for inward processing;
- (b) provide for the collection of import duties on any products, including waste or scrap, derived from the processing or manufacture of goods admitted for inward processing and that are not exported; or
- (c) provide for the admission, for inward processing, of goods under any other customs procedure;
- (d) specify the circumstances in which persons, other than the owner of goods, may import goods for inward processing;
- (e) provide for the identification of goods imported for inward processing;
- (f) specify requirements for inputs, and the process of manufacture of compensating products from goods imported for inward processing;
- (g) provide for the grant of authorisation for inward processing, the persons empowered to grant such authorisation, and the conditions that may apply to such authorisation;

- (h) specify the manner in which operations permitted under the authorisation for inward processing shall be carried out;
- (i) set time limits for inward processing;
- (j) provide for the termination of the inward processing of goods by exportation of their compensating products in one or more consignments; and
- (k) provide for set-off against equivalent goods.

Outward
processing.

153. The Commissioner may, in accordance with the Regulations, give approval for goods in free circulation, being goods of a prescribed kind, to be exported for repair or processing abroad, and the resulting compensating product to be imported and released for home use with total or partial exemption from duty and tax.

Regulations
regarding
outward
processing.

154.—(1) Outward processing shall be conducted in the manner prescribed.

(2) Regulations made for the purposes of subsection (1) shall—

- (a) specify the circumstances in which prior authorisation is required for outward processing, and the proper officers empowered to grant such authorisation;
- (b) fix rates of yield for outward processing, in cases where a fixed rate is considered by the Minister to be appropriate; (c) specify the kinds of goods that may be subjected to outward processing;
- (d) specify the description, quality and quantity of the kinds of compensating products that may be derived from goods under outward processing and the rate of duty applicable to them;
- (e) specify the maximum time for which goods may remain outside of Jamaica under outward processing, and may provide for the Commissioner to grant an extension of that time in appropriate circumstances;

- (f) permit compensating products derived from goods under outward processing to be imported through a customs office other than that through which the goods were exported for outward processing;
- (g) allow for compensating products derived from goods under outward processing to be imported in one or more consignments;
- (h) subject to section 155, provide for goods exported under outward processing to be imported exempt from import duty if the goods are imported in the same state in which they were exported, other than duty repaid or remitted in connection with the exportation of the goods for outward processing;
- (i) provide for the outward processing of goods to be terminated, at the option of the declarant, by the submission of a customs declaration for the clearance of the goods for outright export, subject to compliance with any applicable terms and conditions;
- (j) specify the extent of the exemption from import duty granted when compensating products derived from goods under outward processing are taken into home use, and the method of calculating that exemption; and
- (k) provide for the transfer of ownership of goods under outward processing, or their compensating products, while under outward processing.

155.—(1) The provisions of subsections (2) to (5) shall apply where— Rate of duty upon re-importation.

- (a) goods (whether made in Jamaica or not) are—
 - (i) of a kind that are liable to duty or tax if imported; and
 - (ii) are exported and re-imported;

- (b) the duty or tax chargeable on those goods on their initial importation was duly paid (whether payment is made before or after the exportation); and
- (c) a drawback of the duty or tax referred to in paragraph (a) was—
 - (i) not made on exportation; or
 - (ii) made, and repaid by the Commissioner.

(2) If the goods have not been subjected to any processing abroad, the goods shall be exempt from duty and tax when they are cleared for home use on re-importation.

(3) If the goods, at the time when they are declared for home use after re-importation—

- (a) are of a type that is liable to an import duty or tax *ad valorem*;
- (b) have been subjected to repair, renovation or improvement while abroad; and
- (c) are unchanged in form and character after such repair, renovation or improvement (as the case may be),

the goods shall be chargeable with duty and tax as if the amount of the increase in their value attributable to the repair, renovation or improvement (as the case may be) were the whole value of the goods.

(4) The Rules shall prescribe the circumstances in which goods shall be considered as unchanged in form and character for the purposes of subsection (3)(c).

(5) For the purposes of subsection (3), without prejudice to any powers of the Commissioner under any customs law to ascertain the value of goods for the purpose of assessing duty and tax *ad valorem*, the sum (if any) contracted to be paid for the repair, renovation or improvement of the goods (as the case may be) shall be *prima facie* evidence of the amount of the increase in the value of the goods attributable to the repair, renovation or improvement.

(6) Subsections (3) and (5) shall not apply to a repair for the purpose of maintaining, or placing, goods in working order.

(7) Where the Commissioner is satisfied that the repair, renovation or replacement of goods occurred under warranty, the cost of the repair, renovation or replacement, as the case may be, shall not be taken into account in determining the value of the goods for the purposes of this section.

156.—(1) Unless authorisation is granted by the Commissioner for goods to be placed under a processing procedure—

Submission of goods declarations for a processing procedure.

- (a) a person shall not submit a goods declaration for the goods to be placed under that processing procedure; and
- (b) the goods shall not be placed under that processing procedure.

(2) A goods declaration for goods to be placed under a processing procedure shall reference, in the manner prescribed by Rules, the authorisation for the goods to be placed under that processing procedure.

(3) Where imported goods under a processing procedure are used for a purpose other than the processing of the kind for which the goods were released, duty and tax shall be payable on those goods as though they have been declared and released for home use.

157.—(1) The declarant in relation to imported goods under a processing procedure under this sub-Part shall keep records and submit regular reports to the Commissioner in respect of the goods and their compensating products, in such form and manner as may be prescribed in Rules, and a declarant who fails to do so commits an offence.

Records, reports and verification thereof.

(2) An officer may at any time during an inspection under this Act—

- (a) examine the records kept under subsection (1);
- (b) take stock of imported goods cleared and released for a processing procedure, their compensating products and any other goods present on the premises where the imported goods are processed; and
- (c) take any other action authorised under this Act.

(3) If, during any stock-taking under subsection (2)(b), imported goods under a processing procedure under this sub-Part are found to be—

- (a) greater than the quantity, weight or volume that should be on hand at the premises where the goods are processed, the excess shall be taken as goods in stock; or
- (b) less than the quantity, weight, or volume that should be on hand at the premises where the goods are processed, the shortfall shall be dealt with as goods unaccounted for.

Sub-contracting of processing operations.

158.—(1) The declarant in respect of goods under a processing procedure may, with the prior written approval of the Commissioner, appoint a third party to undertake any aspect of such processing.

(2) An application for approval under subsection (1) shall be made—

- (a) to the Commissioner before the goods are delivered to the third party; and
- (b) in the form and manner, and contain such particulars, as may be prescribed by Rules.

(3) A person who undertakes processing, or appoints a third party to undertake processing, without the approval required under subsection (1) commits an offence.

Sub-Part M—Procedures Applicable to Special Economic Zones

Application of Act to Special Economic Zone goods.

159.—(1) The provisions of this Act apply to all goods entering, within, or exiting, a Special Economic Zone, except as may be otherwise provided by the *Special Economic Zones Act*.

(2) The Rules shall make provision in respect of the customs standards, procedures and requirements applicable to Special Economic Zones.

Removal of goods on closure of Zone.

160.—(1) In the event of the closure of a Special Economic Zone, all goods located at the Zone shall be removed to another Special Economic Zone or placed under another customs procedure, within such time as shall be specified by Rules.

(2) Where subsection (1) is not complied with, duty and tax become immediately payable in respect of the goods.

PART VI.—*Expedited Clearance and Release of Goods*

Sub-Part A—Provisional Clearance

161.—(1) A person seeking to clear goods for a customs procedure may submit a provisional goods declaration in respect of the goods.

Release of goods on incomplete or provisional goods declaration.

(2) Where a provisional goods declaration submitted under subsection (1) is registered, the Commissioner may—

- (a) accept the provisional goods declaration and release the goods to the declarant;
- (b) accept the provisional goods declaration, subject to such conditions as the Commissioner shall notify to the declarant, and release the goods upon the fulfilment of those conditions; or
- (c) refuse the provisional goods declaration, if the Commissioner has reasonable grounds for the refusal.

162. A provisional goods declaration shall contain all the information necessary to ensure that all restrictions imposed by law and all requirements of the customs laws have been complied with in relation to the goods.

Contents of provisional goods declaration.

163.—(1) Subject to the provisions of this Act concerning the release of goods, goods that are cleared under a provisional goods declaration shall be released as if the goods were cleared under a standard goods declaration.

Release of goods cleared under provisional goods declaration.

(2) The Commissioner may refuse to release goods under this section if a condition imposed under section 161 in respect of the goods is not met.

(3) The customs laws regarding the clearance and release of restricted goods shall be complied with at the time a provisional goods declaration is submitted to the Commissioner.

Supplementary
goods
declaration.

164.—(1) A person who registers a provisional goods declaration in respect of goods shall, in such time, form and manner as may be prescribed by Rules, submit to the Commissioner a supplementary goods declaration in relation to those goods.

(2) A supplementary goods declaration shall—

- (a) confirm or correct, as far as necessary for the provision of accurate information, the information in the provisional goods declaration; and
- (b) be supported by all outstanding supporting documents.

(3) A supplementary goods declaration and the provisional goods declaration to which it relates shall, for the purposes of this Act and any other applicable law, be regarded as constituting a single goods declaration that took effect on the date when the provisional goods declaration was registered.

Duty and tax
payable in
respect of
goods cleared
provisionally.

165. The duty and tax payable on goods that are cleared provisionally in accordance with this Part, for a customs procedure that renders the goods subject to the payment of duty and tax, shall be—

- (a) assessed at the date of registration of the provisional goods declaration; and
- (b) paid in accordance with Rules.

Sub-Part B—Simplified Clearance and Release of Goods

Application
for simplified
clearance.

166.—(1) The Commissioner may, without more, approve the release of goods—

- (a) for a customs procedure, in accordance with such simplified clearance and release procedures as may be prescribed by Rules; or
- (b) on acceptance by the Commissioner of a simplified goods declaration, transport document or another document that may be used as a goods declaration under the procedures referred to in paragraph (a).

(2) The Commissioner may, on any reasonable grounds, refuse to release goods through the use of simplified clearance procedures.

(3) Subject to subsection (5), and without limiting the generality of subsection (1), Rules made under subsection (1) may—

- (a) specify the kinds and categories of goods that may not be cleared and released in accordance with the simplified clearance and release procedures provided for in this sub-Part;
- (b) specify the kinds of other documents that may be submitted in *lieu* of a standard goods declaration, such as—
 - (i) a transport document issued in respect of the goods;
 - (ii) any supporting documents issued in respect of the goods; or
 - (iii) any other documents required to be submitted to the Commissioner under this Act in respect of the goods;
- (c) prescribe the minimum information that a simplified goods declaration, or other document in *lieu* of a standard goods declaration, shall contain;
- (d) specify the manner and the time within which a simplified goods declaration, or other document in *lieu* of a standard goods declaration, shall be submitted under the simplified clearance procedure;
- (e) subject to the provisions of this sub-Part, provide for exemptions in respect of goods cleared under this sub-Part from any one or more other provisions of this Act applicable to the standard procedure for the clearance and release of goods;
- (f) prescribe any other relevant matters.

(4) Different simplified clearance requirements may be prescribed under subsection (3) for different categories of persons or goods.

(5) The Minister may make regulations providing for simplified entry and exit, and customs processing and reporting, procedures for—

- (a) small vessels; and
- (b) vessels, or aircraft, for private use.

Duty and tax payable in respect of goods under this sub-Part.

167. The duty and tax payable on goods that are cleared under this sub-Part for a customs procedure that renders the goods subject to the payment of duty and tax, shall be assessed as at the date on which the simplified goods declaration, or other document in *lieu* of a standard goods declaration, in respect of the goods is registered, and at the rate of duty and tax applicable to the goods on that date.

PART VII.—*Clearance and Release of Postal Articles*

Clearance of postal articles.

168.—(1) In this Part, “postal article” has the meaning assigned to it by the *Post Office Act*.

(2) Postal articles, whether imported or destined for export, shall be cleared for an applicable customs procedure, unless exempted from clearance by any customs law.

(3) The provisions of this Act regarding the standard clearance and release of imported goods shall apply, subject to subsection (4) and the other provisions of this Part, to the clearance and release of imported postal articles.

(4) If a postal article with a customs value not exceeding such amount as shall be prescribed is sought to be cleared for home use or outright export, the Commissioner may regard the postal declaration, or any other document, accompanying that postal article to be a goods declaration.

(5) Subsection (4) shall not apply to any postal article in respect of which the exporter thereof intends to apply for a drawback of duty and tax.

169.—(1) Subject to the provisions of the Post Office Act, the Commissioner may cause such number of proper officers, as the Commissioner considers fit, to attend at any post office for the purpose of examining postal articles.

Customs examination of postal articles.

(2) On an examination under subsection (1), the Postmaster-General shall cause all postal articles to be presented to the proper officers, together with the postal declarations completed by or on behalf of the consigner of the postal articles.

170. The Postmaster-General shall pay over to the Commissioner, at such times and in such manner as shall be determined by the Commissioner, the duty and tax collected in respect of dutiable postal articles.

Payment of duty and tax to Commissioner.

171. The provisions of this Act concerning prohibited or restricted goods shall apply to a postal article.

Application of provision regarding prohibited or restricted goods.

PART VIII—*Coasting Trade*

172. For the purposes of this Act—

Activity constituting coasting trade or carriage by sea.

- (a) “coasting trade” means the carriage of goods in Jamaica, by sea or air, from one customs controlled area to another customs controlled area; and
- (b) any vessel or aircraft shall, while so employed in the carriage of goods, be deemed to be a “coasting vessel” or “coasting aircraft”, respectively.

173.—(1) Only goods that have been loaded at a customs controlled area to be carried coastwise shall be carried in a coasting vessel or coasting aircraft, and a person who carries goods coastwise in contravention of this section commits an offence.

Goods that may be carried in coasting vessel or aircraft.

(2) Notwithstanding subsection (1), the Commissioner may, subject to such terms and conditions as the Commissioner considers appropriate, permit—

- (a) a coasting vessel or coasting aircraft to carry goods by way of coasting trade, even if the vessel or aircraft is also carrying

goods, from a place outside Jamaica, that have not yet been cleared in Jamaica;

- (b) goods—
- (i) brought by another foreign-going vessel or foreign-going aircraft to a place in Jamaica from a place outside Jamaica; and
 - (ii) that are consigned to, and intended to be delivered to, another place in Jamaica,

to be transferred to a coasting vessel or coasting aircraft, for carriage by way of coasting trade to that other place in Jamaica, before clearance of the goods in Jamaica; or

- (c) a foreign-going vessel or foreign-going aircraft that has begun to load goods for exportation to, or for use as stores on, a destination outside Jamaica, to carry the goods by way of coasting trade until that loading is completed.

Circumstances in which carriage may not be deemed to be coasting trade.

174.—(1) If the condition mentioned in subsection (2) is met, the proper officer may permit a foreign-going vessel, or foreign-going aircraft—

- (a) having on board cargo intended to be delivered at more than one customs controlled area; or
- (b) intending to load, at a customs controlled area, cargo destined for a place outside Jamaica,

to convey goods from any customs controlled area at which the vessel or aircraft discharges its cargo under paragraph (a) or loads its cargo under paragraph (b), as the case may be, to the places of destination in Jamaica of the vessel or aircraft, without being regarded as a coasting vessel or coasting aircraft.

(2) The condition is that the proper officer must be satisfied that the goods on board the vessel or aircraft and destined for a place outside Jamaica are kept completely separated from the goods on board the vessel or aircraft that are destined for discharge in Jamaica.

175. The carriage of persons, whether passengers, officers or crew, and whether or not in a coasting vessel or coasting aircraft, shall be conducted in accordance with regulations made under this Act and in accordance with all other applicable laws.

Carriage of persons coastwise.

PART IX—*Wrecked, Damaged, Destroyed or Unaccounted for Goods*

176.—(1) This Part applies to imported goods that are wrecked, damaged, destroyed, or otherwise unaccounted for, before the goods are cleared or released for a customs procedure.

Application of this Part.

(2) This Part does not apply to goods that are wrecked, damaged, destroyed, or otherwise unaccounted for—

- (a) while or after being imported, or before or while being exported, in contravention of entry or exit requirements as set out in Part III; or
- (b) goods or compensating products that are seized or confiscated.

177.—(1) A person referred to in subsection (2) shall, in such form and manner and within such time as may be specified by Rules, notify the Commissioner if goods to which this Part applies are damaged, destroyed, or otherwise unaccounted for, and if the person fails to do so the person commits an offence.

Notification of goods damaged, destroyed or unaccounted for.

(2) The person is—

- (a) any person who was in physical control of the goods when the goods were damaged, destroyed, or otherwise unaccounted for; or
- (b) the declarant, or if there is no declarant, the importer or exporter (as the case may be).

(3) Where a notification in relation to goods that are damaged, destroyed, or otherwise unaccounted for, is accompanied by documentary proof establishing to the satisfaction of the Commissioner

that the damage, destruction or failure to account is due to a justifiable cause as prescribed by Rules—

- (a) the Commissioner shall direct that—
 - (i) the declarant request, in accordance with section 72, the withdrawal of the goods declaration in respect of the goods, if all the goods covered by the declaration were damaged, destroyed, or otherwise unaccounted for; or
 - (ii) the existing goods declaration submitted in respect of the goods be amended to exclude the damaged, destroyed, or otherwise unaccounted for goods, if only part of the goods covered by the declaration was damaged, destroyed, or otherwise unaccounted for;
- (b) any duty and tax payable but not yet paid on the goods by virtue of that declaration shall no longer be payable in respect of the goods that are damaged, destroyed, or otherwise unaccounted for, unless otherwise provided by the law regulating that duty and tax;
- (c) any duty and tax already paid, in respect of goods that are damaged, destroyed, or otherwise unaccounted for, pursuant to that declaration may, unless otherwise provided by the law regulating that duty and tax, be refunded to the person who paid the duty and tax; and
- (d) goods that are damaged, destroyed, or otherwise unaccounted for, but which are salvageable in whole or in part, shall, within such time as may be prescribed by Rules—
 - (i) be cleared for a customs procedure, as may be permissible in the circumstances; or
 - (ii) be exported, or destroyed under customs supervision, at the expense of a person referred to in subsection (2).

(4) Subsection (5) applies if—

- (a) the Commissioner is not notified in accordance with subsection (1) in respect of goods to which this Part applies;
- (b) the Commissioner is not satisfied as to documentary proof submitted under subsection (3); or
- (c) no documentary proof is submitted for the purposes of subsection (3).

(5) If this subsection applies—

- (a) any duty and tax that was payable on the goods before they were damaged, destroyed, or otherwise unaccounted for remains payable as if the goods were not damaged, destroyed, or otherwise unaccounted for; and
- (b) the duty and tax already paid on the goods is not refundable.

178.—(1) The declarant or, if there is no declarant, the importer, of goods that are not in free circulation may apply to the Commissioner to have the goods destroyed under customs supervision. Application to destroy goods.

(2) Where an application under subsection (1) is granted, the goods shall be destroyed under customs supervision, in accordance with the conditions (if any) specified by the Commissioner in the particular case.

(3) Where a person who makes an application under subsection (1) intends to utilize any waste or scrap remaining after the goods are destroyed, being waste or scrap derived from imported goods, that person shall—

- (a) so specify in the form; and
- (b) submit a goods declaration to clear the waste or scrap for a customs procedure, within the time specified by Rules.

(4) For the purposes of assessment of duty and tax, the rate of duty and tax applicable to waste or scrap cleared under subsection (3)(b) shall be the rate of duty and tax applicable on the date that the goods declaration in respect of the waste or scrap is registered.

(5) Rules may prescribe the information to be included with an application under subsection (1) and the form and manner of the application.

Wrecks. **179.**—(1) A person in possession of a wreck shall, as soon as is reasonably practicable, if required to do so, deliver the wreck to the Commissioner.

(2) Any wreck that constitutes goods that are not in free circulation shall be dealt with in such manner as may be prescribed by Rules.

(3) Any wreck that constitutes salvageable, damaged or undamaged goods that are not in free circulation shall be dealt with in accordance with the provisions of this Act applicable to such goods.

PART X—*Authorisations*

Sub-Part A—Electronic Customs System

Establishment of, and authorisation to use, Customs System. **180.**—(1) The Commissioner may establish an electronic system for any of the following purposes—

- (a) the communication of any document or information that is required or authorised to be provided under the customs laws by any person to the Commissioner or by the Commissioner to any person;
- (b) the payment or collection of customs duties, taxes, charges and other amounts collectible by the Commissioner;
- (c) expediting the process of dealing with the importation and exportation of goods and the movement of persons entering and leaving Jamaica,

or any other purpose connected with the conduct of customs business.

(2) No person, other than an officer, shall use the Customs System unless that person has been authorised by the Commissioner to use the Customs System.

(3) For the purposes of subsection (2), a customs broker licensed under this Act shall be deemed to be authorised by the Commissioner to use the Customs System—

- (a) during the period of the validity of the licence;

(b) except at any time when the licence is suspended.

(4) The registration of a goods declaration shall lapse if the declarant fails within the time applicable under the customs laws to pay, or provide security for, duty and tax assessed in respect of the goods or to submit a supplementary goods declaration in any case where a supplementary goods declaration is required under section 164.

(5) Where the registration of a goods declaration lapses under subsection (4), the Commissioner is entitled to cause any record of the declaration to be deleted.

*Sub-Part B—Powers of Registration, Certification or other
Authorisation*

181.—(1) Where any form of registration is required under this Act, Rules may prescribe— Rules concerning registration.

- (a) the form, manner and content of applications for such registration and the supporting documents that may be required therefor;
- (b) the grounds for refusal of such registration, and for the suspension or revocation of such registration;
- (c) the terms and conditions applicable to such registration; and
- (d) any other matters that the Commissioner considers necessary for the operation of this sub-Part.

(2) The Commissioner may prescribe Rules requiring cargo aggregators to be registered.

182.—(1) The Commissioner may confer a certified status on any person falling within such requirements as may be prescribed by Rules, if the Commissioner is satisfied that the person— Certified status.

- (a) has a record of compliance with customs laws and revenue laws; and
- (b) has the ability to comply with such requirements as may be prescribed by Rules.

(2) The conferment of certified status under this section shall entitle the person on whom the status is conferred to such facilitation

with regard to customs controls in respect of any one or more of the following, as shall be specified by the Commissioner in the instrument conferring the status—

- (a) security and safety;
- (b) simplified customs procedures such as—
 - (i) release of goods on the provision of the minimum information necessary to identify the goods and permit subsequent completion of a goods declaration in respect of the goods;
 - (ii) clearance of goods at the declarant's premises or such other place as may be approved by the Commissioner;
 - (iii) submission of a single goods declaration for all imports or exports by the declarant over a stated period;
 - (iv) waiver of the assurances required under section 30(2) for the operation of a temporary storage facility;
 - (v) such other special procedures as may be provided for by Rules.

(3) Subject to this section, Rules shall provide for—

- (a) the procedure and requirements for the conferment of certified status, which may include participation in a programme for the conferment of the status;
- (b) the duration of such conferment;
- (c) different categories of certified status;
- (d) the types of facilitation that may be specified under subsection (2);
- (e) consultation with, and the provision of information to, customs authorities of other countries, in respect of the conferment of certified status; and

(f) any other matters connected therewith.

(4) The Commissioner shall continuously monitor the compliance, of a person on whom certified status is conferred, with the customs laws and the requirements, terms and conditions of the conferment, and—

- (a) the conferment may be suspended or withdrawn in the event of non-compliance; and
- (b) the person on whom the status is conferred shall, as soon as is reasonably practicable, notify the Commissioner of any change in circumstances which may affect compliance as mentioned in paragraph (a) or fulfilment of the requirements for that status.

(5) A person may at any time hold one or more categories of certified status.

(6) Without prejudice to the generality of subsections (1) to (5), the status of authorised economic operator under the provisions of this section shall be construed as a category of certified status.

(7) A person ordinarily resident in Jamaica may apply to the Commissioner, in the manner prescribed by Rules, for conferment of the status of authorised economic operator, and the Commissioner may grant the application if satisfied that the applicant meets the requirements set out in subsection (8), and after consultation with such other competent authorities as may be specified for that purpose by the Rules.

(8) The requirements for the conferment of the status of authorised economic operator are that the Commissioner must be satisfied that the person has—

- (a) a proven record of compliance with customs laws and revenue laws;
- (b) a satisfactory system of managing commercial records and, where appropriate, transport records, that allows for appropriate customs control;
- (c) proven financial solvency;

- (d) the requisite standard of competence and professional qualifications directly related to the activity concerned; and
- (e) appropriate security and safety standards.

(9) The Commissioner may confer certified status on a person, on the application of that person in accordance with Rules, if the Commissioner is satisfied that the conferment is appropriate having regard to any reciprocal arrangements which Jamaica has with any other jurisdiction.

(10) In this section “revenue laws” means any law concerning “revenue” as defined by the *Revenue Administration Act*.

Sub-Part C—Procedure for Authorisation

Applications
for
authorisation.

183.—(1) Subject to subsection (2), in this sub-Part “authorisation” means a licence, permit, certification, or other form of authorisation (by whatever name called), other than registration under section 181(2).

(2) This sub-Part shall not apply to any authorisation under another Part of this Act, for which a specific procedure is provided in this Act.

(3) A person who is not an officer may apply, for an authorisation, by submitting an application to the Commissioner in such form and manner, and accompanied by such information, as may be prescribed by Rules.

(4) On receiving an application under subsection (3), the Commissioner—

- (a) may require the person who submitted the application (hereafter in this Part referred to as “the applicant”) to provide such additional information as the Commissioner considers necessary for the purposes of determining the application;
- (b) shall, if satisfied that the authorisation meets such criteria as are prescribed by Rules for the grant of the authorisation, grant the authorisation subject to such terms and conditions (if any) as the Commissioner considers appropriate;

- (c) shall, if not satisfied that the applicant meets the criteria referred to in paragraph (b), refuse to grant the authorisation.

(5) The Commissioner shall notify the applicant in writing of the decision under subsection (4) and—

- (a) where the grant is subject to any terms and conditions, specify the terms and conditions;
- (b) in the case of a refusal to grant the authorisation, state the reasons for the refusal.

184. The Commissioner may revoke an authorisation granted to an applicant under section 183, or suspend the authorisation for such period as the Commissioner considers appropriate, if—

Suspension or revocation of authorisation.

- (a) the applicant, in writing to the Commissioner, requests the revocation or suspension;
- (b) the applicant fails to comply with any terms or conditions subject to which the authorisation was granted, or fails to comply with any provision made by or under this Act;
- (c) the applicant provided false or misleading information in the application for authorisation;
- (d) the applicant has been convicted of an offence under this Act;
- (e) the Commissioner is satisfied that the applicant no longer meets the criteria referred to in section 183(4)(b); or
- (f) the Commissioner determines that the authorisation is no longer required.

185.—(1) Subject to section 186, before the Commissioner refuses to grant an authorisation under section 183(4), or revokes or suspends an authorisation granted on an application under that section, the Commissioner shall give written notice of the proposed refusal, revocation or suspension (as the case may be) to the applicant, stating—

Procedure for refusal of authorisation, or suspension or revocation of authorisation.

- (a) in the case of a suspension, the proposed period of the suspension;

- (b) in the case of a revocation, the proposed effective date of the revocation;
- (c) the grounds for the refusal, suspension or revocation (as the case may be); and
- (d) the period within which the applicant may make written representations thereon to the Commissioner, being a period of not less than seven days from the date of service of the notice on the applicant.

(2) After considering such representations as are made by the applicant pursuant to a notice under subsection (1), the Commissioner may, as the case requires—

- (a) proceed with the refusal, suspension or revocation;
- (b) grant the authorisation or withdraw the proposed suspension or revocation; or
- (c) modify any proposed period or date referred to in subsection (1)(a) or (b), or any terms or conditions of the grant of authorisation, or any other aspect of its decision as communicated in the notice under subsection (1),

and shall notify the applicant accordingly.

(3) An applicant whose application has been refused or whose authorisation has been revoked under this sub-Part may at any time thereafter make a fresh application under section 183 for authorisation.

Immediate
suspension of
authorisation.

186.—(1) Notwithstanding section 185, the Commissioner may, in accordance with this section, suspend an authorisation granted under section 183(4) to any person, with immediate effect.

(2) The Commissioner shall not act under subsection (1) unless the Commissioner is satisfied that immediate suspension is required in order to—

- (a) preserve the integrity of the Customs System;
- (b) prevent the occurrence of fraud on the revenue, or other unlawful revenue loss;

- (c) protect the interest of national security; or
- (d) otherwise protect the public interest.

(3) Upon suspending a person's authorisation pursuant to this section, the Commissioner shall notify the person in writing, stating—

- (a) the period of the suspension; and
- (b) the grounds for the suspension, as far as can be disclosed without compromising the Customs System or any customs operations or compromising any investigation relating to the suspension.

(4) A person who is notified under subsection (3) of the suspension of that person's authorisation may, within seven days after receipt of that notice, or such longer period as the Commissioner may in the circumstances allow, make written representations as to why the suspension should be withdrawn.

(5) After considering such representations as are made under subsection (4) in a particular case, the Commissioner may—

- (a) withdraw the suspension;
- (b) confirm the suspension and specify the period for which it shall continue, being the same or a shorter or longer period than that specified under subsection (3)(a); or
- (c) revoke the authorisation.

PART XI.—*Provisions Regarding Rulings, Determinations and Decisions*

Sub-Part A—Advance Ruling

187.—(1) A person who is an importer, exporter or producer of goods may apply to the Commissioner for an advance ruling in relation to—

Application
for advance
ruling.

- (a) a tariff classification of the goods;
- (b) the origin of the goods; or
- (c) any other relevant matter, as specified by Rules, in respect of which the Commissioner considers it appropriate to issue an advance ruling.

(2) An application for an advance ruling shall relate only to transactions between the same parties in respect of goods of a single class or kind.

(3) An application for the purposes of this sub-Part shall—

- (a) be made to the Commissioner in such form and manner as may be prescribed by Rules; and
- (b) contain such information and be accompanied by such supporting documents or other information as may be prescribed by Rules.

(4) On receiving an application under this sub-Part, the Commissioner may require the applicant to submit any additional information that the Commissioner considers necessary in order to make a decision on the application.

Consideration
of
application
for an
advance
ruling.

188.—(1) Upon considering an application for an advance ruling, the Commissioner may—

- (a) grant the application; or
- (b) refuse the application if the Commissioner is satisfied that—
 - (i) any of the provisions of section 187 is not met;
 - (ii) the applicant made a false or misleading statement in the application or has omitted to state a fact that is material to the consideration of the application;
 - (iii) the application is frivolous or vexatious, or otherwise has no merit; or
 - (iv) the application concerns an issue that is the same as, or substantially similar to, an issue—
 - (A) that is before a court; or
 - (B) that is the subject of a review or appeal under this Act.

(2) The Commissioner shall notify the applicant of the Commissioner's decision whether to grant or refuse the application, within thirty days after the receipt of the application, and—

- (a) if the application is refused, of the grounds for the refusal; or
- (b) if the application is granted, the advance ruling shall be issued within ninety days after the date of receipt of the application.

189.—(1) Subject to this section, the form and content of an advance ruling granted by the Commissioner under this Act shall be prescribed by Rules.

Form,
content and
duration of
advance
ruling.

(2) An advance ruling shall—

- (a) specify the goods of the class or kind to which it applies;
- (b) identify the applicant for the ruling as the person who is entitled to clear goods for a customs procedure specified in the ruling, on the basis of the ruling; and
- (c) state the validity period of the ruling, being a period in accordance with subsection (3).

(3) An advance ruling shall be valid for a period of three years as from the date of issue of the ruling, unless—

- (a) otherwise prescribed by Rules; or
- (b) its validity ceases under section 193.

190.—(1) Subject to subsection (3), an advance ruling binds both the person referred to in section 189(2)(b) (hereinafter referred to as the recipient of the ruling) and the Commissioner.

Effect of
advance
ruling.

(2) An advance ruling shall, to the extent applicable, be applied in any assessment or re-assessment made, in relation to the goods to which it applies, by or on behalf of the recipient of the ruling or the Commissioner, as the case may be.

(3) The Commissioner—

- (a) may rescind an advance ruling in any case where the Commissioner is satisfied that the ruling was based on the

submission of information that is false or misleading in, or omits, any material particular; and

- (b) is not bound by an advance ruling rescinded under paragraph (a).

Clearance of goods under advance ruling.

191. When clearing goods for a customs procedure under an advance ruling, the recipient of the ruling or other person clearing the goods on behalf of the recipient shall—

- (a) provide proof to the Commissioner that the ruling applies to the goods; and
- (b) comply with the applicable procedures prescribed by Rules.

Amendment of advance ruling.

192.—(1) The Commissioner may amend an advance ruling either on application by the recipient of the ruling or on the Commissioner's own initiative—

- (a) to correct any error in the ruling;
- (b) in the case of a ruling concerning an advance tariff classification, to give effect to an amendment to the First Schedule; or
- (c) in the case of a ruling with respect to the origin of goods, to give effect to an amendment to the rules of origin applicable under any relevant agreement to which Jamaica is a party.

First Schedule.

(2) The Commissioner shall immediately notify the recipient of the advance ruling, in the case where an amendment is made under subsection (1), and the amendment shall take effect—

- (a) in the case of an amendment under subsection (1)(a), from the date of the notification, unless subsection (3) applies;
- (b) in the case of an amendment under subsection (1)(b), from the date of the amendment to the First Schedule;
- (c) in the case of an amendment under subsection (1)(c), from the date of the amendment to the rules of origin.

(3) If the recipient of the advance ruling establishes that he relied on the advance ruling in good faith and that the correction is to his

detriment, the date on which the amendment takes effect shall be postponed to such date as shall be specified by the Commissioner in accordance with Rules, and having regard to the justice of the case.

193. An advance ruling ceases to be valid immediately upon the occurrence of any of the following circumstances—

Effect of subsequent change in law.

- (a) if a provision of this Act is repealed or amended and that repeal or amendment renders the advance ruling incompatible with this Act; or
- (b) if a court delivers a judgment that renders the advance ruling legally incorrect, whether expressly or by virtue of an interpretation placed by the court on a provision of this Act.

Sub-Part B—Voluntary Disclosure Relief

194. In this sub-Part—

Interpretation for this sub-Part.

“incorrect assessment” means an assessment or re-assessment in respect of goods, due to the submission of inaccurate or incomplete information, or the non-submission of information, to the Commissioner, which resulted in—

- (a) no duty and tax, or an incorrect amount of duty and tax, being paid or recovered on the goods; or
- (b) an incorrect refund or drawback being made by the Commissioner;

“voluntary disclosure relief” means any relief which may be provided for in an agreement under section 197(1).

195.—(1) A person who has paid, or is liable to pay, duty and tax or interest on duty and tax, or who has received, or is entitled to receive, a refund or drawback on duty and tax, may apply for voluntary disclosure relief if that person knows or suspects that such duty and tax, refund or drawback is incorrect because of an incorrect assessment.

Application for voluntary disclosure relief.

(2) Voluntary disclosure relief under subsection (1) shall not apply—

- (a) to a person in respect of whom a customs audit or customs investigation in relation to the matter has commenced but has not yet been concluded, or who has been notified as to such an audit or investigation; or
- (b) if the matter involves any act of fraud.

(3) Notwithstanding subsection (2), the Commissioner may allow a person to apply for voluntary disclosure relief if the Commissioner determines that, having regard to the circumstances and ambit of the customs audit or customs investigation, that the application would be in the interest of good customs administration and the best use of the Commissioner's resources.

(4) An application for voluntary disclosure relief shall be submitted to the Commissioner, in such form and manner as may be prescribed, within a period of five years from the date of the incorrect assessment on which the application is based.

Requirements for voluntary disclosure relief. **196.** An application for voluntary disclosure relief shall be granted if—

- (a) the application is voluntary, full and complete in all respects;
- (b) the Commissioner is satisfied that the assessment or re-assessment concerned involved an incorrect assessment; and
- (c) the Commissioner and the applicant conclude an agreement in accordance with section 197.

Agreement for voluntary disclosure relief. **197.—**(1) Before the Commissioner grants an application for voluntary disclosure relief, the Commissioner and the applicant shall conclude an agreement in writing—

- (a) setting out the details of the incorrect assessment on which the voluntary disclosure relief is based;
- (b) stating the amount owing to the Commissioner;
- (c) containing an undertaking by the applicant to pay to the Commissioner the amount owing in accordance with such arrangements as may be agreed; and

- (d) containing an undertaking by the Commissioner that, should the applicant comply with the undertaking given in terms of paragraph (c)—
 - (i) the Commissioner will not institute criminal proceedings against the applicant for any offence under this Act, or any other customs law, arising from the incorrect assessment; and
 - (ii) no penalty will be imposed on the applicant for any contravention of this Act or any other customs law, arising from the incorrect assessment.
- (2) The Commissioner may act in accordance with subsection (3), if—
 - (a) an applicant for voluntary disclosure relief made a false or misleading statement in the application or failed to disclose information material to the consideration of the application; or
 - (b) there are reasonable grounds to believe that the applicant for the voluntary disclosure relief was aware, before entering into the agreement, that an audit or investigation of any kind had commenced, or was about to commence, in respect of the matter.
- (3) The Commissioner may—
 - (a) cancel any agreement concluded with the applicant under subsection (2) and withdraw any relief provided for in the agreement;
 - (b) recover any amount owing by the applicant, as determined in accordance with this Act and any other applicable customs laws;
 - (c) set-off any amount paid to the Commissioner under the agreement against the amount owed to the Commissioner by the applicant; and

- (d) impose any penalty applicable to the applicant under this Act or any other customs law.

Refusal of application.

198. If the Commissioner refuses an application for voluntary disclosure relief, the Commissioner shall be entitled to recover any amount owing by the applicant under this Act or any other customs law.

Sub-Part C—Administrative Reviews and Appeals

Reviews.

199.—(1) A person who is aggrieved by an applicable decision of the Commissioner made under this Act may, in writing to the Commissioner within thirty days after receiving notice of the decision in accordance with subsection (2), apply for a review of the decision.

(2) A notice of the decision for the purposes of subsection (1), shall be given by the Commissioner within such time as shall be specified by Rules and shall include the reasons for the decision.

(3) An application under subsection (1) shall be submitted in the manner prescribed by Rules, together with such information as may be prescribed by Rules.

(4) The Commissioner may, if satisfied that there are good reasons for doing so (for example, as a result of any factors outside of that person's control), extend the time allowed under subsection (1) for the making of an application.

(5) The Commissioner may—

- (a) personally consider and determine an application under this section or assign an officer, or a review committee established under section 201, to consider and determine the application; or
- (b) assign an officer, or a review committee established under section 201, to make recommendations to the Commissioner on any matter concerned in an application for the purpose of enabling the Commissioner to determine the application.

(6) The Commissioner may, by written notice, summon any person to appear before the Commissioner (or such officer or committee

as is assigned under subsection (5) to hear or make recommendations on the application) and that person may be examined, on oath or otherwise, upon such appearance.

(7) For the purposes of this section, an applicable decision means a decision or omission in respect of—

- (a) an authorisation;
- (b) the assessment of any duty or tax;
- (c) the abatement of any duty;
- (d) the entitlement to a refund or drawback;
- (e) an advance ruling;
- (f) any voluntary disclosure relief;
- (g) the release of goods;
- (h) the imposition of a fee or charge, or the recovery of a cost;
- (i) the detention or seizure of goods; or
- (j) the issuance of an administrative penalty notice.

(8) The Regulations may provide for reviews, other than reviews in respect of applicable decisions, and the procedure for such reviews.

(9) An officer assigned for the purposes of subsection (5) shall not be the same officer who made the applicable decision which is the subject of the review but shall be an officer of equivalent, or higher, rank who did not participate in the applicable decision.

200.—(1) An application for review under section 199 shall be determined within such time as shall be specified by Rules.

Time for
determining
review.

(2) An application for review under section 199 shall be determined either by—

- (a) confirming or varying the decision concerned;

- (b) setting aside the decision concerned and substituting a new decision; or
- (c) referring the matter back to the officer who made the decision, to be dealt with in accordance with the directions of the Commissioner.

(4) The Commissioner shall, in writing, notify the applicant of the decision on the determination of the application, and the reasons for the decision, within such time as shall be prescribed by Rules.

Review
committees.

201.—(1) The Commissioner may make Rules—

- (a) establishing review committees for the purposes of this sub-Part;
- (b) prescribing the categories of decisions that may or shall be dealt with by such review committees; and
- (c) providing for the rules of procedure governing such review committees.

(2) Rules made under subsection (1) may establish specialist review committees, for reviews against specific categories of decisions.

(3) A review committee established pursuant to Rules made under subsection (1) may be composed of—

- (a) officers of the Customs Agency only; or
- (b) officers of the Customs Agency and other suitably qualified persons.

Effect of
application
for review.

202.—(1) The fact that an application is made under section 199 does not have the effect of suspending or deferring—

- (a) a person's obligation to make a payment or to do anything required to be done by virtue of the decision concerned; or
- (b) the Commissioner's entitlement to recover any amount owed to the Commissioner by any person.

(2) Where an application for review relates to a decision concerning goods that are under customs control, the Commissioner shall not release those goods unless the amount assessed by the

Commissioner in respect of the goods is paid or the Commissioner receives security in accordance with Part XII for the amount to be paid.

203.—(1) A person who is dissatisfied with the decision made on an application under section 199 may appeal to the Revenue Appeals Tribunal (“the Tribunal”) in accordance with the applicable law within thirty days after being notified of the decision. Appeal to Tribunal.

(2) The Tribunal may extend the time allowed for submitting an appeal under subsection (1), if satisfied that there is good reason to do so.

(3) The Tribunal may determine an appeal before it by—

- (a) confirming the decision; or
- (b) varying or substituting the decision, which may include increasing or reducing any assessment of duty, tax, fee, charge, or penalty imposed under this Act.

(4) The Tribunal shall provide to the parties on an appeal a written record of its decision on the appeal, including the reasons therefor.

(5) An appeal from the decision of the Tribunal shall lie to the Supreme Court, in accordance with applicable rules of court.

PART XII.—*Security for Payment of Duty and Other Amounts Payable to Commissioner*

204.—(1) The Commissioner may require security—

- (a) for the payment of any duty or tax that is, or may become payable under this Act or any other customs law;
- (b) to ensure the collection of any amount payable to the Commissioner other than as described in paragraph (a); or
- (c) for the fulfilment of any other obligation of a declarant or other debtor in relation to any requirement under the customs laws.

When security may be required.

(2) Security referred to in subsection (1)(a) may be required from any one of the following persons in respect of goods—

- (a) the declarant; or
- (b) any other person who may become liable to pay an amount to the Commissioner in respect of the goods.

(3) Security referred to in subsection (1)(b) may be required from a person who is, or may become, liable for the payment of the money owed to the Commissioner.

(4) Security referred to in subsection (1)(c) may be required from a person who is, or may become, liable for the fulfilment of the obligation.

(5) Another person may provide security on behalf of a person from whom security is required under this section.

(6) The Commissioner may require security referred to in subsection (1) as a pre-condition for, or at any time subsequent to—

- (a) the release of goods for a customs procedure;
- (b) the issue or renewal of an authorisation that the Commissioner is empowered to grant under this Act; or
- (c) any exemption that the Commissioner is empowered to grant under this Act.

Determination
of amount of
security.

205.—(1) Security for the purposes of this sub-Part shall be determined on the basis of risk.

(2) When determining the amount of security required under section 204, the Commissioner shall take into account all relevant factors, including—

- (a) an assessment of the risk to the revenue, and the monetary extent of that risk, to be covered by the security;
- (b) the record of compliance with customs laws and duty and tax obligations, of the person required to give the security;
- (c) whether the person required to provide the security has certified status and, if so, the level of the certification;

- (d) the annual turn-over of the business of the person from whom the security is required;
 - (e) whether the person from whom the security is required is licensed or registered under this Act; and
 - (f) such other factors as may be prescribed by Rules.
- (3) If for any reason there is a change affecting—
- (a) the risk in relation to the payment or recovery of the duty, tax, or other amount; or
 - (b) the fulfilment of the obligation,

in respect of which the security was provided, the Commissioner may require the person from whom the security was required to alter the form, nature or amount of the security, or to renew the security, as the Commissioner considers appropriate.

(4) Where security is required to be provided in respect of the payment of duty, tax, or other amounts payable to the Commissioner, the amount of the security required shall not exceed the amount that is payable.

206.—(1) Security provided under this Part shall be in the form of— Form of security.

- (a) a bond issued on behalf of the person required to give the security;
- (b) any security allowed under an international clearance arrangement;
- (c) a cash deposit, or any other equivalent means of payment acceptable to the Commissioner; or
- (d) such other kind of security as may be specified by Rules.

(2) No interest shall become payable by the Commissioner in respect of any security provided under this Act.

(3) Security in terms of subsection (1) shall be either—

- (a) a security relating to a single transaction, goods declaration or customs procedure; or

(b) a comprehensive security to cover any duty, tax, and other obligations relating to two or more transactions, goods declarations or customs procedures.

(4) Rules may prescribe the requirements to be satisfied by a comprehensive security for the purposes of subsection (3)(b).

(5) Security under this Part, and all documents accompanying the security, shall be given in such form and manner, and contain such particulars, as may be prescribed by Rules.

Utilisation of security. **207.**—(1) Security provided under this Part may be utilised for the payment or recovery of duty, tax, or other amounts owed to the Commissioner, or the fulfilment of any other obligation, in respect of the matter for which the security was given.

(2) Subject to subsection (1), the Commissioner shall return a security to the person who provided the security if—

- (a) the validity period of the security has expired and the security was not utilised under subsection (1); or
- (b) the purpose for which the security was provided has lapsed and cannot be revived.

PART XIII.—*Enforcement*

Sub-Part A—Recovery of Debt

Sums owed to Commissioner recoverable as debt, excluding *de minimis*. **208.**—(1) Subject to subsection (3), money owed to the Commissioner under this Act—

- (a) is a debt payable to the Commissioner for credit to the Consolidated Fund; and
- (b) shall be recovered by the Commissioner in accordance with this sub-Part and any other applicable provisions of this Act.

(2) Where costs or expenses are recoverable under this Act by the Commissioner from any person, the amount of those costs or expenses is a debt payable to the Commissioner.

(3) Where the amount of duty or tax payable in respect of any goods does not exceed the amount prescribed in the Regulations,

no notice of demand shall be given, and no action or proceedings to recover that duty or tax shall be taken, under this Act.

209.—(1) A debt may be recovered from—

- (a) the person liable for the debt; or
- (b) any security covering that debt.

Recovery of debt, excluding *de minimis*.

(2) Where a debt is underpaid by an amount that is less than an amount prescribed by the Minister, no action or proceedings to recover the under-payment shall be taken under this Act.

210. The Commissioner may allow debt to be paid in instalments, subject to such terms and conditions as may be prescribed by Rules.

Payment of debt in instalments.

211. Interest shall be payable, at such rate as shall be prescribed by regulations subject to affirmative resolution, except as otherwise provided in any law.

Rate of interest.

212.—(1) A person may, in accordance with such terms and conditions as may be prescribed by Rules, establish an account with the Commissioner for the payment of duty, tax, and any other amounts owed to the Commissioner under this Act or any other customs law.

Establishment of accounts with Commissioner.

(2) The Commissioner shall prescribe Rules in respect of the management of accounts for the purposes of subsection (1).

213.—(1) The Commissioner may act in accordance with subsection (2) in any case where the Commissioner knows or has reasonable cause to believe that a person—

Garnishment.

- (a) holds, controls or has custody of money belonging to a debtor; or
- (b) is, or will be within one year, liable to make a payment to a debtor.

(2) The Commissioner may, in writing, require the person to pay the money otherwise payable to the debtor, in whole or in part, to the Commissioner—

- (a) forthwith, in the case of moneys immediately payable; or

- (b) in any other case, as and when the moneys become payable, on account of the amount owed by the debtor to the Commissioner.

(3) Where the money required to be paid to the Commissioner under subsection (2) is money otherwise payable to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement—

- (a) applies to all such payments to be made by the person to the debtor until the amount owed by the debtor is satisfied; and
- (b) operates to require payments to the Commissioner, out of each such payment, of such amount as is stipulated by the Commissioner in the requirement.

(4) A receipt issued by the Commissioner for money paid by a person as required under this section is a good and sufficient discharge of the liability of that person to the debtor, to the extent of the payment.

(5) Every person who, being required under subsection (2) to pay an amount of money to the Commissioner—

- (a) fails to pay that amount (in this section referred to as the unpaid amount) to the Commissioner; or
- (b) pays all or part of the money (in this section referred to as the diverted money) to a person other than the Commissioner,

remains liable to pay to the Commissioner the unpaid amount or the diverted money, as the case may be, and the Commissioner shall be entitled to recover that sum from the first mentioned person as a civil debt owing to the Commissioner.

(6) Where a person carries on business under a duly authorised name, or style, other than the person's own name—

- (a) notification to the person of a requirement under this section may be addressed to the name or style under which the person carries on business; and

- (b) in the case of personal service, in addition to any other lawful means of service, shall be deemed to be validly served if left with an adult person employed at the place of business of the addressee.

(7) Where persons carry on business in partnership—

- (a) notification to the persons of a requirement under this section may be addressed to the partnership name; and
- (b) in the case of personal service, in addition to any other lawful means of service, shall be deemed to be validly served if served on one of the partners or left with an adult person employed at the place of business of the partnership.

(8) Except for subsection (5), the provisions of this section apply to the Government of Jamaica, in respect of—

- (a) money belonging to a debtor, which the Government holds, controls or has custody of; and
- (b) any payment that the Government is, or will be within one year, liable to pay to a debtor.

214.—(1) The Commissioner may issue a certificate certifying the amount owed by a debtor to the Commissioner that has not been paid, or any part thereof, as an amount payable by the debtor. Certification
of debt.

(2) The Commissioner may make an application to the Supreme Court (in this section referred to as the Court) for an order to have registered in the Court a certificate issued under subsection (1).

(3) An application under subsection (2) shall be made in accordance with the applicable rules of court and shall be heard by a single Judge of the Court in Chambers.

(4) On a hearing under subsection (3), the Judge shall make an order, for the registration of the certificate in the Court, if the Judge is satisfied that—

- (a) the Commissioner is not restricted by section 215 from taking action under this section in respect of the amount owed by

the debtor or any part thereof, as certified in the certificate;
and

- (b) there are reasonable grounds for making the order and it would not in the circumstances be unjust to do so.

(5) A certificate registered under subsection (4) has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgement obtained in the Court against the debtor for a debt in the amount certified, and the rules of the Court, including those provisions for accrual of interest, shall apply accordingly.

(6) For the avoidance of doubt, for the purposes of this section—

- (a) the rules of the Court relating to judgment debts apply; and
- (b) the Commissioner shall be deemed to be a judgment creditor under those rules.

(7) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate, or in respect of any proceedings taken to collect the amount certified, are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(8) For the purpose of creating a charge, lien or priority on property (whether real or personal), or any interest or right in such property, belonging to a debtor, a certificate required to be registered under subsection (4) may be filed, registered or otherwise recorded in any registry system, including—

- (a) the Register Book of Titles under the *Registration of Titles Act*;
- (b) the Security Interests Registry established under the *Security Interests in Personal Property Act*; and
- (c) the Record Office under the *Record Office Act*,

in the same manner as a document evidencing a judgment of the Court against a person for a debt owing by that person, or a writ of execution

in respect of that debt, may be filed, registered, or otherwise recorded, in that registry system.

(9) If a certificate has been filed, registered, or otherwise recorded, in a registry system under subsection (8) in respect of any property, or any interest or right in such property, belonging to a debtor, a charge, lien, or priority, is created on that property, interest or right, in the same manner and to the same extent as if the certificate were a document evidencing a judgment of the Court against a person for a debt owing by that person or a writ of execution in respect of that debt.

(10) A charge, lien or priority, created under subsection (9) by the filing, registration or other recording of a certificate, shall be subordinate to any charge, lien or priority, in respect of which all steps necessary to make it effective against other creditors were taken before the time the certificate was filed, registered or otherwise recorded.

(11) If a certificate is filed, registered or otherwise recorded under subsection (8), proceedings may be taken in respect of the certificate, including proceedings—

- (a) to enforce payment of the amount evidenced by the certificate, interest on the amount and all costs and charges paid or incurred in respect of—
 - (i) the filing, registration or other recording of the certificate; and
 - (ii) proceedings taken to collect the amount;
- (b) to sell or otherwise dispose of any property, or interest or right in such property, belonging to a debtor, and to effect the transfer of the title to such property, interest or right, in furtherance of a sale or disposition of the property, interest or right;
- (c) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the certificate;
- (d) to cancel or withdraw the certificate wholly or in respect of any of the property, or interest or right, affected by the certificate; or

- (e) to postpone the effectiveness of the filing, registration or other recording of the certificate in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, interest, or right, affected by the certificate,

in the same manner and to the same extent as if the certificate were a document evidencing a judgement against a person for a debt owing by that person or a writ of execution in respect of that debt.

(12) If a certificate registered under subsection (4) is presented to an official in a registry system referred to in subsection (8) for filing, registration or other recording under that subsection, or a document relating to the certificate is presented to such official for filing, registration, or other recording, for the purpose of any proceeding described in subsection (1), it shall be accepted for filing, registration or other recording in the same manner and to the same extent as if the certificate or document were a document evidencing judgment against a person for a debt owing by that person or a writ of execution in respect of that debt.

(13) If access is sought to any person, place or thing to make a filing, registration or other recording referred to in subsection (12), access shall be granted in the same manner and to the same extent as if the certificate or document relating to the certificate, as the case may be, were a document evidencing judgment against a person for a debt owing by that person or a writ of execution in respect of that debt.

Limitation
on actions
under
sections 213
and 214.

215.—(1) The Commissioner shall not take any action under section 213 or 214 in respect of an amount owed by a debtor unless—

- (a) the debtor has acknowledged in writing the amount owed, which may include by way of a goods declaration, and has not paid the amount;
- (b) the time for making any objection or appeal in respect of the amount owed has expired and the amount has not been paid;
- (c) in the event of an objection or appeal in respect of the amount owed, the objection or appeal has been finally determined in

accordance with this Act, and the amount has not been paid;
or

- (d) the amount owed has finally been determined by a court, otherwise than pursuant to an objection or appeal referred to in paragraph (c), and the amount has not been paid.

(2) The amounts in respect of which action may be taken by the Commissioner under section 213 or 214 shall not include any amounts, as determined by the Commissioner, that are payable to the debtor by the Commissioner.

(3) This section does not apply to—

- (a) any amount required to be deducted or withheld, and required to be remitted or paid, under any enactment; or
- (b) any penalty or interest payable in respect of an amount referred to in paragraph (a).

216.—(1) Where an amount owed by a debtor has not been paid, the Commissioner may require—

Recovery by deduction or set-off.

- (a) the retention, by way of deduction or set-off of such amount as the Commissioner may specify, out of any amount that may be, or become, payable to the debtor by the Government of Jamaica; and
- (b) that the amount deducted or set-off be paid to the Commissioner to be applied in reduction of the amount owed by the debtor to the Commissioner.

(2) The amount that may be deducted or set-off under subsection (1) shall not include any amounts, as determined by the Commissioner, that are payable to the debtor by the Commissioner.

217.—(1) All duties, taxes, fees, charges and other sums of money payable, other than as a penalty imposed, under a customs law may be recovered as a civil debt, before a Parish Court, without limitation of amount—

Recovery as a civil debt, *etc.*, without prejudice to other remedies.

- (a) at any time within seven years after the sum becomes payable; and

- (b) regardless of whether a fine on conviction or an administrative penalty is paid or payable in respect of an offence.

(2) The provisions of sections 213 and 214 are without prejudice to any other provisions of this Act or any other enactment for the recovery of duty and tax owed by a debtor.

*Sub-Part B—Investigations and Powers of Search,
Seizure and Detention*

Power of
entry and
search.

218.—(1) The proper officer shall be entitled to enter and search any premises or other place in Jamaica—

- (a) with the consent of the owner or occupier of the premises or other place; or
- (b) in accordance with a warrant issued under subsection (4).

(2) An officer who has reasonable cause to suspect that any goods, documents or computer equipment, to which this subsection applies, are kept or concealed at any place in Jamaica may apply to a Judge of a Parish Court or a Justice of the Peace for a special warrant in relation to such goods, documents or computer equipment.

(3) Subsection (2) applies to—

- (a) any goods in relation to which there is a contravention of the customs laws;
- (b) any documents relating to goods referred to in paragraph (a); and
- (c) any computer equipment that there are reasonable grounds to believe—
 - (i) have been used in connection with; and
 - (ii) to contain evidence relating to,

the contravention.

(4) Where, on an application under subsection (2), the Judge or Justice is satisfied that the issue of a special warrant is justified, the

Judge or Justice may grant the special warrant authorising any officer, named therein or authorised by the Commissioner, to—

- (a) enter and search the premises or place, by day or by night;
- (b) open the lock of any door, box, safe, or other receptacle, which the officer has reasonable grounds to believe is relevant to the search, using such force as may be necessary; and
- (c) seize and carry away any matter described in subsection (3) found at the place or premises.

(5) A Judge of a Parish Court or a Justice of the Peace may issue a warrant under this section only on the written application of the officer, setting out under oath or affirmation the grounds why it is necessary for the officer to gain access to the relevant premises or place.

(6) Where the matter seized under subsection (4) is—

- (a) computer equipment, that equipment shall be detained for not more than seventy-two hours, and thereafter shall be returned to the owner thereof, or the person or premises from which it was seized, as determined appropriate in the circumstances;
- (b) matter other than computer equipment, that matter may be retained for so long as is necessary to retain it, in its original form, in connection with the purpose for which the warrant was issued, but if the officer has reasonable grounds for believing that the matter—
 - (i) may need to be produced for the purposes of any legal proceedings; and
 - (ii) might otherwise be unavailable for those purposes,the matter may be retained until those proceedings are concluded.

(7) A Judge of a Parish Court or a Justice of the Peace may, on application by the proper officer, extend the time allowed under subsection (6)(a) for the detention of computer equipment, if satisfied

that the continuation of the detention is necessary for the purpose of an investigation of an offence, or any proceedings for an offence, under the customs laws.

(8) An officer shall issue a receipt for any goods, documents or computer equipment seized or detained during a search under this section, to the owner or occupier of the premises or other place concerned.

(9) A person shall not prevent an officer from gaining access to any premises or other place which that officer is entitled to access pursuant to a warrant issued under this section.

(10) Notwithstanding subsection (5), the person in control of the premises or other place concerned is entitled to demand that an officer, who seeks access thereto, produce—

- (a) the officer's identification card referred to in section 277; and
- (b) a warrant authorising the officer to enter and search the premises or place, as the case may be.

(11) If an officer, after having complied with a demand under subsection (10), is not immediately allowed entry to the premises or other place, the officer may use force to the extent necessary for the purpose of gaining entry in accordance with the warrant, including—

- (a) opening, or breaking through where necessary, any entrance to the area, premises or facility, or any door, window, room, enclosure, place, safe, chest, box, package or container that is locked and in respect of which the keys are not produced on demand or are otherwise not made available;
- (b) breaking through any fence, wall, roof, ceiling, ground or flooring.

(12) A person exercising powers under a warrant issued under this section may secure from other persons such assistance as is reasonably necessary for the purpose of executing the warrant.

219.—(1) An officer may stop and search any means of transport— Access to means of transport.

- (a) within a customs controlled area; or
- (b) on any road, if the officer has reasonable grounds to suspect that the means of transport contains any goods in respect of which a contravention of any customs law has been, or is being, committed.

(2) An officer may, at any time for the purposes of this section—

- (a) order the operator of a vessel, aircraft, or vehicle, to stop or land, as the case may require; or
- (b) if necessary, force the vessel, aircraft or vehicle, to stop or land, as the case may require.

(3) A person who refuses to stop or land (as the case may be) when required to do so by an officer under subsection (1) or (2), or to permit the search by the officer, commits an offence.

220.—(1) When performing a search of any premises or other place, or a means of transport, to which an officer has gained entry in accordance with section 218 or 219, in exercise of a power of search, the officer— Powers during search of premises or other place, or means of transport.

- (a) shall have access to every part of the premises or other place, or means of transport;
- (b) may rummage any part of the premises or other place, or means of transport;
- (c) may fasten down the hatchways of any vessel, or mark, lock up, seal or otherwise secure any goods or documents found in, or at the premises or other place, or means of transport; and
- (d) may search, in accordance with this sub-Part, any person found in, on or at the premises or other place, or means of transport.

(2) If any hatchways of a vessel have been fastened down, or any goods or documents have been marked, locked up, sealed or otherwise secured under subsection (1)(c)—

- (a) a person shall not, except with the permission of an officer—
 - (i) open the hatchways;
 - (ii) open, break, destroy, alter or in any way tamper with any such mark, lock or seal; or
 - (iii) remove the goods or documents; and
- (b) the person in control of the premises or other place, or means of transport, shall take all steps reasonable in the circumstances to prevent any contravention of paragraph (a).

(3) A person who contravenes subsection (2)(a) commits an offence.

Stopping or
calling on
persons.

221.—(1) Subject to subsection (2), an officer may, at any time, for the purpose of enforcing any provision of this Act or any other customs law—

- (a) stop or call on any person, whether or not the person is located inside or outside a customs controlled area; and
- (b) require the person to produce any items which the person—
 - (i) is carrying;
 - (ii) has brought into Jamaica; or
 - (iii) intends to take out of Jamaica.

(2) An officer may exercise the powers referred to in subsection (1)(a) and (b) in relation to any person inside or outside a customs controlled area if—

- (a) the person is located at or in any premises or other place, or in a means of transport, to which the officer has lawfully gained access; or

- (b) the officer has reasonable grounds to suspect that the person has—
 - (i) any goods that are subject to customs control, in respect of which a contravention of this Act or any other customs law is being or has been committed; or
 - (ii) any documents concerning—
 - (A) any goods that are subject to customs control, in respect of which a contravention of this Act or any other customs law is being, or has been, committed; or
 - (B) any activity which constitutes a contravention of this Act or any other customs law.

(3) If a person referred to in subsection (1) fails to stop when requested by an officer to do so, the officer may take such action, including the use of force, as is necessary in the circumstances to stop that person.

222.—(1) Subject to the provisions of this section, an officer who has reasonable grounds to suspect that a person is carrying goods that are subject to customs control, in respect of which a contravention of any customs law is being committed, may search the person, and any baggage carried by that person. Search of persons.

- (2) In the exercise of any powers under this section—
 - (a) a female shall only be searched by a female officer;
 - (b) a search that involves probing any orifice or cavity of the body shall be carried out only—
 - (i) pursuant to a warrant issued by a Judge of a Parish Court or a Justice of the Peace; and
 - (ii) by a duly registered medical practitioner, who along with the person being searched, such

medical assistants as are absolutely necessary in the circumstances, and a witness, if requested by the person being searched, shall be the only persons present during the search;

- (c) every search shall be carried out in a place and manner that affords the person being searched reasonable privacy; and
- (d) a search of an individual who is under the age of eighteen years shall only be conducted in the presence of the person's parent or guardian, or other person (not being an officer) for the time being having the charge, care or custody of that individual, unless such parent, guardian, or other person having the charge, care or custody of the individual cannot be located through reasonable effort.

Exclusion of liability for searches.

223. The Commissioner and every officer acting in the exercise of a power of search in accordance with the provisions of this sub-Part shall not be held liable, in connection with the search, on the grounds that no evidence of the commission of an offence was found during the search.

Inspection of goods.

224.—(1) An officer may inspect—

- (a) any goods within a customs controlled area or in or on any premises or other place, or any means of transport, within a customs controlled area;
- (b) any goods in the possession of a person within a customs controlled area;
- (c) any goods found during a search, under this sub-Part, of—
 - (i) any premises or other place, or means of transport; or
 - (ii) any person;
- (d) any goods on public display for sale;
- (e) any goods produced on request by an officer under this sub-Part;

- (f) any goods in respect of which the officer has reasonable grounds for suspecting that a contravention of this Act or any other customs law has been committed; or
- (g) any goods that are subject to customs control.

(2) Subject to the requirements of section 218 (power of entry and search), goods referred to in subsection (1) may be inspected at any time, without prior notice to any person.

(3) An officer may request any person selling, offering for sale or otherwise dealing in, processing or transporting, imported goods—

- (a) to produce the goods, or make the goods available for inspection, either immediately or at a time and place specified by the officer;
- (b) if the person is the declarant in relation to a goods declaration registered under this Act, not more than seven years prior to the date of a request under this subsection in respect of those goods, to produce proof of—
 - (i) a declaration for a customs procedure;
 - (ii) payment of the duty and tax applicable to the goods;
 - (iii) in the case of goods for commercial use, the marks and numbers of the packages or containers in which the goods were imported; and
 - (iv) compliance with any other requirements of the customs laws relating to the goods;
- (c) if the person is not the declarant referred to in paragraph (b), to disclose the name, address and other contact details of the person from whom the goods were obtained.

(4) If an officer has reasonable grounds to suspect that a person referred to in subsection (3) is concealing—

- (a) any goods or information which that person was required to produce under that subsection; or

(b) any goods in respect of which a contravention of this Act or any other customs law is being, or has been, committed, the officer may search that person in accordance with the provisions of section 222(2).

(5) A person who fails to comply with a request made to that person under subsection (3) commits an offence.

Inspection of documents.

225.—(1) Subject to the requirements of section 218 (power of entry and search), an officer may inspect—

- (a) any documents—
 - (i) found during a search, under this sub-Part, of any premises or other place, or means of transport;
 - (ii) produced to the officer pursuant to a request under this sub-Part; or
 - (iii) that relate to any act or omission which the officer has reasonable grounds to suspect constitutes a contravention of this Act or any other customs law;
- (b) any documents that relate to—
 - (i) any premises or other place, or means of transport within a customs controlled area;
 - (ii) any premises or other place, or means of transport, searched under this sub-Part;
 - (iii) any goods within a customs controlled area, including any goods in, on or at, any premises or other place, or in a means of transport, within a customs controlled area;
 - (iv) any goods found during a search, under this sub-Part, of any premises or other place, or means of transport;
 - (v) any goods produced on the request of an officer under this sub-Part;

- (vi) any goods in respect of which the officer has grounds to suspect that a contravention of this Act or any other customs law has been committed; or
 - (vii) any other goods that are subject to customs control; and
- (c) any records that a person is required to keep or produce under this Act, or any other customs law relating to goods to which this Act applies.

(2) The power to inspect documents under this section includes, to the extent necessary for the enforcement of this Act or any other customs law—

- (a) examining the documents;
- (b) copying or making extracts from the documents;
- (c) making audio or video recordings of the documents; and
- (d) removing the documents in order to make copies, extracts or recordings, or in order to carry out further examination of the documents.

(3) An officer who removes documents pursuant to subsection (2)(d) shall—

- (a) provide, in the form prescribed by Rules, a receipt for the documents; and
- (b) return the documents within a reasonable time, unless the documents are otherwise detained in accordance with this Act.

(4) An officer may, for the purposes of subsection (1), require any person who is in possession, or who has custody or control, of a document referred to in that subsection to—

- (a) produce the document or make the document available for inspection, either immediately or at a time and place specified by the officer; or

(b) furnish the officer with a copy of the document.

(5) An officer may require any person to produce, either immediately or at a time and place specified by the officer, any document which that person is required under this Act or any other customs law to submit and has failed to submit.

Investigative powers. **226.** An officer may, for the purposes of this Act or any other customs law—

- (a) require a person found at, in, or on, any premises or other place, or in a means of transport, accessed by the officer pursuant to a power of search under this sub-Part, and who the officer has reasonable grounds to suspect has the relevant information, to answer any question concerning—
 - (i) any goods, documents or persons in, on or at the premises or other place or in the means of transport, as the case may be;
 - (ii) any goods or documents produced by that person pursuant to a requirement under this sub-Part; or
 - (iii) any act or omission constituting an offence under this Act or any other customs law;
- (b) require a person stopped or called on under this sub-Part, to answer any question concerning any goods or documents found on that person;
- (c) take photographs and make audio-visual recordings of anything, or any person, that may be—
 - (i) relevant for the purpose of any inspection or investigation under this Act; or
 - (ii) evidence for the purpose of any criminal or civil proceedings under this Act or any other customs law.

Information on oath. **227.—(1)** A person who provides information to the Commissioner for the purposes of this Act shall take all reasonable care to ensure that

the information provided is correct in all material particulars, and a person who contravenes this subsection commits an offence.

(2) The Commissioner or a proper officer may administer any oath in relation to the giving of information under this Act.

228.—(1) If under this sub-Part a person who is required to produce any goods or documents, or to answer any question, fails to do so, that person commits an offence and an officer may issue a notice to that person directing the person to appear before that officer or any other officer specified in the notice, at a time and place specified in the notice, to, as the case may be—

Failure or refusal to produce goods or documents or to answer questions.

- (a) produce the goods or documents concerned; or
- (b) answer the questions concerned.

(2) A notice under subsection (1)—

- (a) shall be in writing, in such form as may be prescribed by Rules;
- (b) shall specify the goods, documents or questions, as the case may be, concerned; and
- (c) may require the person to answer questions under oath or affirmation.

(3) A person to whom a written notice is issued under this section shall comply with the notice and shall answer truthfully all questions put to the person in respect of the matter.

(4) Nothing in this section or section 226(a) or (b) shall be construed as compelling any person to answer any question which may tend to incriminate that person.

229.—(1) If any container or package in which goods that are not in free circulation are transported is not sealed in accordance with requirements prescribed under this Act, an officer may—

Securing goods not in free circulation.

- (a) direct the person responsible for the sealing to affix the appropriate seal or fastening to the container or package; or

(b) at the cost of the person responsible for the sealing, affix the appropriate seal or fastening to the container or package.

(2) An officer may, at any time, affix a seal or fastening to, add an additional seal or fastening to, or replace any seal or fastening on, any container or package, containing goods that are not in free circulation.

Customs
supervision
of goods not
in free
circulation.

230. The Commissioner may require to be done under customs supervision anything that is required to be done under this Act in relation to goods that are not in free circulation.

SUB-PART C—Powers of Arrest

231.—(1) In addition to any power of arrest or detention under any other law, an officer may arrest any person whom the officer has reasonable grounds to believe has committed, is committing or is about to commit, an offence against a customs law, other than an offence in respect of which proceedings are stayed by virtue of section 254(5).

Officer's powers of arrest.

(2) If a person arrested, or liable to be arrested under a customs law escapes from or evades such arrest, that person may be arrested by an officer at any time within seven years after the date on which the person was first arrested, or liable to be arrested (as the case may be) under the customs law.

(3) A person arrested under this section shall be taken before a Judge of a Parish Court or a Justice of the Peace to be dealt with according to law.

232.—(1) Where an officer has reasonable cause to suspect that a person has committed an offence against any customs law, the officer may apply to a Judge of a Parish Court, or a Justice of the Peace, for a warrant authorising the arrest of that person.

Arrest of person under authority of warrant.

(2) Where an officer knows, or has reasonable cause to suspect, that a person who is liable to be arrested under any customs law is located on any premises, the officer may apply to a Judge of a Parish Court, or a Justice of the Peace, for a warrant to enter and search those premises and effect the arrest.

(3) A warrant of arrest issued by a Judge or Justice under subsection (1) or (2) may be executed by any officer.

(4) A person arrested under this section shall be brought before a Judge of a Parish Court or Justice of the Peace to be dealt with according to law.

233.—(1) An officer who, in the reasonable belief that the officer is arresting a specific person, arrests another person, is not liable for wrongful arrest unless it is established that the officer acted maliciously in making the arrest.

Non-liability for wrongful arrest.

(2) A constable, an officer, or any other person who assists an officer in making an arrest, or who is required to detain a person so arrested, and who reasonably believes that the person is the person who is to be or has been arrested in accordance with section 231 or 232, shall not be liable if the arrest is wrongful unless it is established that the person acted maliciously in assisting the arrest.

*Sub-Part D—Carrying and Use of Arms and
Ammunition*

Use of
firearms.

234.—(1) The Commissioner may issue to an officer any of the following items—

- (a) subject to the provisions of the Firearms Act, an official firearm and ammunition;
- (b) non-lethal weapons, for the purpose of exercising the officer's functions under this Act, and an officer to whom any such item is issued shall be entitled to carry that item.

(2) The Commissioner may, after consultation with the Minister responsible for national security and subject to the Firearms Act, establish an armoury, appoint an armourer, and assign that armourer such functions and duties as are required, for the purposes of the customs laws.

(3) The Commissioner shall, in accordance with the general directions of the Minister responsible for finance, provide an account to the Minister responsible for national security, in respect of the armoury and, after considering the account, the Minister responsible for national security shall take such action (if any) as that Minister considers appropriate.

*Sub-Part E—Detention, Seizure and Confiscation of
Goods*

Power to
detain goods.

235.—(1) An officer may detain goods under customs control, or documents relating to such goods—

- (a) for the purpose of investigating or determining whether—
 - (i) a contravention of this Act or any other customs law has been committed;

- (ii) the goods are to be excluded or exempted from a requirement of this Act or any other customs law, or are goods in respect of which an authorisation or other special dispensation applies;
 - (iii) the goods are prohibited, or restricted, goods and are being dealt with in contravention of any law; or
 - (iv) the goods have been or are being used in the commission of an offence against a customs law;
- (b) if the detention of the goods or documents is permitted by any other law; or
 - (c) in such other circumstances as may be prescribed by regulations subject to affirmative resolution.

(2) Upon detaining goods under subsection (1), the officer shall issue a notice of detention to—

- (a) the declarant or, if there is no declarant, the importer or exporter (as the case may be); and
- (b) the person in whose custody the goods are, or are believed to be, at the time of detention.

(3) Subsection (2) does not apply to a person who is unknown or cannot be located through reasonable effort, and in that case the officer shall affix the notice to a conspicuous location at the place where the goods are detained.

(4) If goods are detained under this section while the goods are at a customs controlled area, the Commissioner shall issue a copy of the notice of detention to the operator of the customs controlled area.

(5) A notice of detention under subsection (1) shall be in the form prescribed by Rules.

236.—(1) Before inspecting goods that have been detained under this sub-Part, an officer shall—

- (a) notify the declarant of the date, time and place for the inspection; and that the declarant may opt to be present at the inspection; or

Inspection of
detained
goods.

- (b) require the declarant to be present at the inspection, by notice in writing stating the date, time and place for the inspection.

(2) An officer may inspect goods detained under this sub-Part, in the absence of the declarant, if—

- (a) the declarant fails to attend the inspection at the date, time and place specified in a notice under subsection (1); or
- (b) subsection (3) applies.

(3) An officer may dispense with the requirement for a notice under subsection (1) and proceed to conduct an inspection of goods if the officer is satisfied that giving notice of the date, time and place for the inspection would prejudice—

- (a) an investigation into an offence under this Act or any other law, or any interest of national security or public health; or
- (b) the exercise of the Commissioner's functions under this Act or any other law.

Termination
of detention.

237.—(1) Where goods are detained under this sub-Part but the grounds for the detention no longer exist or twelve months have elapsed since the date of the detention, the Commissioner shall—

- (a) either seize or confiscate the goods, if reasonable grounds for such seizure or confiscation exist under this Act or any other law, or terminate the detention of the goods;
- (b) notify the declarant of the action taken under paragraph (a); and
- (c) if the goods are kept at any premises that is not a customs controlled area, the Commissioner shall also notify the owner or occupier of the premises of the action taken under paragraph (a).

(2) Notwithstanding—

- (a) the time specified for a review or appeal under sub-Part C of Part XI; and
- (b) that the time allowed under subsection (1) has not elapsed, where no action is taken under subsection (1)(a) within ninety

days after the date of the detention, the declarant or, if there is no declarant, the importer or exporter (as the case may be) may at any time while the goods remain detained apply for a review or make an appeal, in accordance with sub-Part C of Part XI, against the detention.

238.—(1) The Commissioner may seize any goods detained under this sub-Part— Power to seize goods.

- (a) if the goods are liable to confiscation under this Act or any other customs law;
- (b) if the goods are, or may be, needed as evidence in any criminal proceedings under the customs laws;
- (c) if the seizure of the goods is otherwise permitted under this Act or any other law; or
- (d) in such other circumstances as may be prescribed by regulations.

(2) Goods seized under this section shall, for the duration of the seizure, be stored in accordance with section 242.

239.—(1) Upon seizing goods under section 238, an officer shall issue a notice of the seizure — Notice of seizure.

- (a) in the case of goods that were detained under section 235 at the time of the seizure, to the person to whom the notice of detention was issued;
- (b) in the case of goods other than goods referred to in paragraph (a), to—
 - (i) the declarant or, if there is no declarant, the importer or exporter (as the case may be); and
 - (ii) the occupier of the premises where the goods are located at the time of the seizure.

(2) Subsection (1)(b) shall not apply to a person who is unknown or cannot be located through reasonable effort, and in that case the officer shall affix the notice to a conspicuous location at the place where the goods are seized.

(3) A notice under subsection (1) shall be issued in the form and, subject to subsection (2), in the manner, prescribed by Rules and shall state the quantity and description of the goods seized.

Termination
of seizure.

240.—(1) The declarant in respect of goods seized under this sub-Part, or, if there is no declarant, the importer or exporter (as the case may be) may apply to the Commissioner for termination of the seizure.

(2) An application under subsection (1) shall—

- (a) state the reason why the seizure should be terminated; and
- (b) be made in such form and manner as may be prescribed by Rules.

(3) Upon considering an application under subsection (1), the Commissioner may—

- (a) grant the application subject to such conditions as the Commissioner considers appropriate for compliance with the customs laws in respect of the goods; or
- (b) refuse the application.

(4) Subject to subsection (5), if an application under this section is granted, the applicant shall pay to the Commissioner—

- (a) all duty, tax, charges and penalties due to the Commissioner in respect of the goods; and
- (b) any expenses incurred by the Commissioner in respect of—
 - (i) the seizure; and
 - (ii) if the goods were detained under section 235 before the seizure, the detention of the goods.

(5) Where an application under subsection (4) is granted because there were no grounds under this Part for the seizure, the applicant shall not be liable to pay the expenses referred to in subsection (4)(b).

(6) The Commissioner shall notify the applicant—

- (a) if the application under subsection (1) is granted, of the termination of the seizure; or

- (b) if the application under subsection (1) is refused, of the refusal and the grounds therefor.

(7) A copy of the notice given under subsection (6)(a) shall be given to the occupier of the premises on which the seized goods are kept.

241.—(1) Notwithstanding section 199, where an application for review is made or an appeal is brought against the decision of the Commissioner to refuse an application for the termination of a seizure, the Commissioner may apply to the Court for an order for the confiscation of the goods. Application for confiscation upon refusal to terminate seizure.

(2) The Commissioner shall—

- (a) give notice of the application under subsection (1) to—
 - (i) the declarant or, if there is no declarant, the importer or exporter (as the case may be); and
 - (ii) the occupier of the premises where the goods are located at the time of the seizure; and
- (b) publish a notice of the application in a daily newspaper in circulation throughout Jamaica, and may also publish the notice using such other means as the Commissioner considers appropriate to bring the application to the attention of the public.

(3) Subsection (2)(a)(ii) shall not apply to a person who is unknown or cannot be located through reasonable effort, and in that case the officer shall affix the notice to a conspicuous location at the place where the goods are seized.

(4) Where an application for the confiscation of goods is made under subsection (1), any person who claims an interest in the goods may, before the confiscation order is made, apply to the Court for an order under subsection (5) showing cause why the confiscation order should not be made.

(5) On an application under subsection (4), the Court shall make an order declaring the nature, extent and value (as at the time the

order is made) of the person's interest in the goods if the Court is satisfied—

- (a) that the person was not in any way involved in the commission of the offence on which the seizure was grounded; and
- (b) where the person acquired the interest during or after the commission of the offence, the person acquired the interest—
 - (i) for sufficient consideration; and
 - (ii) without knowing, or having reasonable grounds to suspect, that at the time the person acquired the interest the goods were connected with the offence.

(6) Subject to subsection (7), where a confiscation order has already been made under this section, a person who claims an interest in the goods concerned may, before the end of the period of sixty days commencing on the day on which the confiscation order is made or such longer period as the Court may allow having regard to all the circumstances, apply to the Court for an order under subsection (5).

(7) A person who—

- (a) had knowledge of the application for the confiscation order before the order was made; or
- (b) appeared at the hearing of that application, shall not, except with the leave of the Court, be permitted to make an application under subsection (6).

(8) Where a person has obtained an order under subsection (5) and the period allowed by rules of court with respect to the making of appeals has expired, the Minister shall direct that—

- (a) the goods or the part thereof to which the person's interest relates be promptly returned to the person within ninety-six hours; or
- (b) an amount equal to the value of the person's interest as declared in the order be paid to the person.

(9) In this section, “Court” means the Parish Court for the parish in respect of which the goods are seized.

242.—(1) Goods detained under section 235 or seized under section 238— Storage of detained or seized goods.

- (a) may, pending any action that may be taken in respect of the goods, be kept at the place where they were detained or seized, as the case may be, or be stored at any premises or warehouse, as the Commissioner may direct; and
- (b) in the case of goods that are perishable, shall be stored in accordance with Rules.

(2) A person shall not remove goods, from the place where they are kept pursuant to subsection (1), unless the Commissioner so permits.

(3) If the place where goods are kept pursuant to subsection (1) is not a customs controlled area, the Commissioner shall for the purposes of this Act have the same access and powers in respect of those goods as if that place were a customs controlled area.

(4) A person who contravenes subsection (2) commits an offence.

243.—(1) Subject to subsection (3), the Commissioner may confiscate— Confiscation of goods.

- (a) any goods in respect of which an offence against this Act or any other customs law is committed, in respect of which proceedings are stayed by virtue of section 254(5);
- (b) any goods that are required to be destroyed or otherwise disposed of in order to give effect to a provision of this Act or any other customs law;
- (c) any item (including any means of transport), that has been specially constructed, adapted, altered or fitted, in any manner for the purpose of concealing goods subject to customs control, in a manner calculated to deceive an officer;

- (d) any document in respect of which an offence falling within paragraph (a) has been committed or which relates to such an offence;
- (e) any goods imported contrary to any restrictions or conditions imposed under any other law, or that are required to be confiscated under any other law, and which the competent authority has directed the Commissioner to confiscate; or
- (f) any prohibited goods.

(2) In this section and sections 250 and 251, “competent authority” means the appropriate Government authority responsible for regulating the prohibited or restricted goods concerned.

(3) The Commissioner may confiscate any goods referred to in subsection (1), which were seized pursuant to a power under this sub-Part—

- (a) if after the expiration of sixty days after the date on which the goods were seized, no application for termination of the seizure is made under section 240; or
- (b) if an application for termination of the seizure has been made but has been refused and no application for review or appeal against the refusal has been made within the time allowed under sub-Part C of Part XI.

(4) Where an application for review, or an appeal is made against the refusal of an application to terminate a seizure, the Commissioner shall act in accordance with section 241.

(5) The Commissioner shall give written notice of the confiscation of goods under this section to—

- (a) in the case of goods seized under section 238, the person to whom notice of the seizure is required to be given; and
- (b) in any other case, the declarant or, if there is no declarant, the importer or exporter (as the case may be), or the person in possession of, and who appears to be in possession of, the goods at the time of the confiscation.

(6) Goods confiscated under this section become the property of the Crown.

244.—(1) The Minister shall direct the Commissioner to return any goods if the goods were confiscated in error. Withdrawal of confiscation.

(2) Where goods are directed to be returned under subsection (1), the Commissioner shall notify—

- (a) all persons to whom notice of the confiscation was issued; and
- (b) if goods confiscated under this sub-Part are kept at any premises, the owner or occupier of the premises.

245. Goods confiscated under this sub-Part shall be disposed of in such manner as the Minister may prescribe. Disposal of confiscated goods.

Sub-Part F—Prohibited and Restricted Goods

246.—(1) The Minister may, by order published in the *Gazette*, prohibit absolutely, the importation, exportation, or carriage coastwise, of— Power to prohibit importation, etc., of goods.

- (a) goods of any kind specified in the order; or
- (b) goods of any kind to or from any particular place, outside Jamaica, named in the order.

(2) The following goods are prohibited goods for the purposes of this Act—

- (a) any goods imported in contravention of any law prohibiting the importation of those goods; and
- (b) any goods in the process of being exported in contravention of any law prohibiting the exportation of those goods.

(3) A person who imports or exports prohibited goods or contravenes an order under subsection (1) commits an offence.

247. Goods under a trans-shipment, transit to export or stores procedure shall not be treated as prohibited goods under this sub-Part, unless the import or export of those goods under the trans-shipment, transit to export or stores procedure is expressly prohibited by any regulations made under this Act or by any other law. Savings for transit goods and stores.

Restricted goods.

248.—(1) Any goods that may only be imported into, or exported from, Jamaica in accordance with conditions or restrictions imposed by law are restricted goods for the purposes of this Act.

(2) The Minister may by order published in the *Gazette* specify in relation to—

- (a) goods of any kind specified in the order; or
- (b) goods of any kind intended to be imported, exported, or carried coastwise, to or from any particular place outside Jamaica named in the order,

the conditions which shall be required to be met for the goods to be imported, exported or carried coastwise.

Clearance of prohibited goods and restricted goods.

249.—(1) No person shall clear prohibited goods for a customs procedure.

(2) No person may clear restricted goods for a customs procedure unless—

- (a) that person submits to the Commissioner an authorisation for the import, possession or export of those goods; or
- (b) the authorisation referred to in paragraph (a) is issued or confirmed electronically by the competent authority for issuing the authorisation, in such manner as the Commissioner may direct.

(3) Notwithstanding subsections (1) and (2), but subject to subsection (4), imported prohibited or imported restricted goods destined for a place other than Jamaica may be cleared for trans-shipment, transit to export, or as stores.

(4) Imported prohibited or imported restricted goods shall not be trans-shipped, or placed under the transit to export procedure or the stores procedure, in circumstances where the import, export or possession of such goods is prohibited or restricted by any law the purpose of which is to—

- (a) combat illicit trade in narcotics, or arms and ammunition, or endangered species, or any other items prescribed by regulations;

- (b) combat the spread of contagious human, animal or plant diseases;
- (c) protect the public against hazardous substances;
- (d) protect public health or safety; or
- (e) give effect to any international obligation binding on Jamaica, except in accordance with the applicable provisions of that law.

(5) A person who attempts to clear goods in contravention of this section commits an offence.

250.—(1) Subject to subsection (2), the Commissioner shall detain, in accordance with section 235, any prohibited or restricted goods imported, or in the process of being exported in contravention of—

Detention of prohibited or restricted goods.

- (a) any law; or
- (b) any term or condition imposed under any law.

(2) The following goods are excluded from detention under subsection (1)—

- (a) imported prohibited or imported restricted goods that are cleared under section 249(3) for trans-shipment or transit to export, or as stores, if the goods are—
 - (i) dealt with strictly in accordance with the provisions of this Act relating to that procedure; and
 - (ii) exported from Jamaica within the period applicable to those goods in accordance with that procedure;
- (b) prohibited or restricted goods that are on board a foreign-going means of transport when the means of transport enters Jamaica, if those goods are destined for a place other than Jamaica and remain on board that means of transport until the means of transport leaves Jamaica; and
- (c) prohibited or restricted goods that are on board a foreign-going means of transport, when the means of transport enters

Jamaica, as stores for that means of transport, if those goods—

- (i) are declared under section 50;
- (ii) are not off-loaded in Jamaica; and
- (iii) are used, or exported from Jamaica, on board that means of transport as stores for that means of transport,

unless the goods are goods referred to in section 249(4).

(3) The Commissioner shall promptly terminate the detention of goods under subsection (1) if—

- (a) the goods were detained in error; or
- (b) the competent authority requests the Commissioner to terminate the detention of the goods, unless the Commission has other grounds for detaining the goods under this Act.

(4) Subject to subsection (5), the Commissioner may—

- (a) on application by the declarant or, if there is no declarant, the importer, of prohibited or restricted goods detained under this section, terminate the detention of the goods and allow the applicant, to clear the goods for outright export and immediately export those goods from Jamaica, at the applicant's expense and under the supervision of the Commissioner;
- (b) on application by the person who intended to export prohibited or restricted goods that were in free circulation before being detained under this section, terminate the detention and allow the goods to revert to free circulation.

(5) The Commissioner may grant an application under subsection (4) only if the applicant submits proof to the Commissioner, in the manner prescribed by Rules, that the competent authority does not object to the application.

251.—(1) Goods detained under section 250 shall be dealt with in accordance with, as the case requires—

Disposal of
detained
prohibited or
restricted
goods.

- (a) the law under which the goods are prohibited goods or restricted goods;
- (b) the law regulating criminal proceedings in respect of those goods, if and to the extent that the goods are needed as evidence in any criminal proceedings; or
- (c) if the competent authority requests that the Commissioner dispose of the goods and the Commissioner accedes to the request, in accordance with that request.

(2) For the purposes of subsection (1)(c), the Commissioner—

- (a) may impose conditions, as to costs or otherwise, in acceding to a request; and
- (b) shall confiscate the goods in accordance with section 243.

(3) Prohibited or restricted goods referred to in subsection (1)(a) or (b) shall be handed over to, or kept under customs control for the purposes of the competent authority.

(4) Subject to subsections (3) and (5), a competent authority shall be responsible for the removal and disposal of prohibited or restricted goods detained under section 250.

(5) Prohibited or restricted goods—

- (a) imported, or in the process of being exported, in contravention of any law referred to in section 249(4) shall be dealt with in the manner provided for in that law, or if there is no provision in that law providing for the manner in which those goods shall be dealt with in the event of unlawful importation or exportation (as the case may be) then in accordance with the directions of the competent authority concerned; or
- (b) in any case where paragraph (a) does not apply, shall be detained or confiscated under this section, unless required

under subsection (3) to be handed over or kept, and shall be disposed of in accordance with the directions of the Minister and subject to the following principles—

- (i) in the case of goods referred to in section 246(2)(a) or 249(4), the goods shall be destroyed or otherwise disposed of in a way that will not allow the goods into free circulation in Jamaica;
- (ii) in the case of goods referred to in section 246(2)(b), the goods shall be disposed of in an appropriate manner, which may include—
 - (A) destroying the goods; or
 - (B) exporting or re-exporting the goods.

(6) Where prohibited or restricted goods are detained, confiscated, destroyed, or otherwise disposed of under this Act or any other customs law, the Commissioner shall be entitled to recover all the expenses related to such detention, confiscation, destruction or disposal, from—

- (a) the declarant; or
- (b) if there is no declarant, the importer or exporter of the goods, and any agent liable for the goods under section 270.

Effect on other laws relating to prohibited or restricted goods.

252. Nothing in this sub-Part shall be construed as affecting the application of any other law prohibiting, restricting or controlling the importation, possession or exportation of goods, to the extent that this sub-Part is inconsistent with that other law.

PART XIV—*Offences*

Specified offences. Third Schedule.

253.—(1) For the purposes of this Act, the offences set out in the first column of the Third Schedule are the specified offences, and the penalties specified in the second column of that Schedule shall apply respectively to the offences, upon summary conviction before, unless otherwise provided, a Judge of a Parish Court.

(2) In the case of a conviction for an offence under section 40(5) before a Parish Court, the Court shall if no request is made to it

under section 52 of the Proceeds of Crime Act, refer the matter to the Director of Public Prosecutions, along with the notes of evidence and the Court's observations thereon, for the purpose of considering whether an application ought to be made under section 52 of the Proceeds of Crime Act.

(3) The Minister may by order subject to affirmative resolution amend the Third Schedule.

254.—(1) For the purposes of this Act, the applicable offences are the offences set out in the Fourth Schedule, and any other offence to which an administrative penalty may be applied by virtue of any provision made by or under this Act. Administrative penalties. Fourth Schedule.

(2) Where the Commissioner has reasonable grounds to suspect that a person has committed an applicable offence, the Commissioner shall, in respect of the alleged offence—

- (a) issue an informal warning to the person;
- (b) issue a formal warning to the person; or
- (c) issue an administrative penalty notice to the person.

(3) For the purposes of subsection (2)—

- (a) an informal warning is a notice of the contravention given, without any particular requirement as to form, a record of which is maintained in accordance with Rules but which—
 - (i) shall not be taken into account in assessing a person's compliance with customs laws;
 - (ii) shall be taken into account in determining whether a formal warning or administrative penalty is issued in respect of any further contravention;
- (b) a formal warning is a written notice of the contravention, in the form prescribed by Rules, a record of which is maintained by the Commissioner in accordance with Rules, for the purpose of—
 - (i) assessing the person's compliance with customs laws; and

- (ii) determining whether an administrative penalty notice is issued in respect of any further contravention.

(4) An administrative penalty notice under this section is a notice in writing in prescribed form offering the person to whom it is issued the opportunity to discharge any liability to conviction of an applicable offence by payment of an administrative penalty under this section, and the notice shall—

- (a) give such particulars of the offence alleged as are necessary for giving reasonable information of the allegation; and
- (b) state—
 - (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (6) proceedings will not be taken for the offence; and
 - (ii) the amount of the administrative penalty payable by the person.

(5) Where a person is issued an administrative penalty notice under this section, proceedings shall not be taken against any person in respect of the applicable offence concerned until the end of fifteen days following the date of the notice or such longer period as may be specified in the notice.

(6) A person to whom an administrative penalty notice is issued under this section shall not be liable to be convicted of the applicable offence concerned—

- (a) if the person pays the administrative penalty with respect thereto in accordance with this section; and
- (b) if the offence is a continuing offence, the person has taken steps such that the offence no longer continues, before the later of expiration of the fifteen days following the date of the administrative penalty notice referred to in subsection (4) or such longer period as may be specified in the notice, or the date on which proceedings are begun in respect of the offence.

(7) In subsections (5) and (6), “proceedings” means criminal proceedings in respect of the act or omission constituting the offence concerned, and “convicted” shall be construed accordingly.

(8) Payment of an administrative penalty under this section shall be made to the Commissioner, and in any proceedings a certificate that payment of the administrative penalty was or was not made to the Commissioner by a date specified in the certificate shall, if the certificate purports to be signed by the Commissioner, be admissible as evidence of the facts stated therein.

(9) In any proceedings for an applicable offence, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of an administrative penalty under this section, unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference is made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment or non-payment.

(10) The conduct specified in Column 1 of the Fourth Schedule constitutes offences for which—

Fourth
Schedule.

- (a) the penalty on conviction specified in Column 2 of that Schedule shall apply, as the maximum penalty that may be imposed in relation to the respective offence, upon conviction before a Judge of a Parish Court; and
- (b) the administrative penalty specified in regulations made under subsection (11) shall apply in *lieu* of the respective offence, in accordance with the provisions of this section.

(11) The Minister may, subject to affirmative resolution, make regulations providing for any matter necessary for, or incidental to, the operation of this section, and, in particular, such regulations may—

- (a) prescribe—
 - (i) the form of notice to be issued under subsection (2)(c);
 - (ii) the nature of any information to be furnished to the Commissioner along with any payment of an administrative penalty;

- (iii) provisions for the cancellation or variation of notices issued under subsection (2)(c);
- (b) amend the Fourth Schedule; and
- (c) specify the administrative penalty that applies in *lieu* of conviction for the offence, and for that purpose may specify different levels of administrative penalty in respect of specified circumstances relating to the commission of the offence (for example, having regard to the gravity of the contravention, the value of the goods concerned, whether loss or damage is caused to any person, or the *mens rea* involved in the commission of the offence).

(12) The Commissioner shall not maintain a record of any administrative penalty, imposed under this section, longer than seven years after the date on which the administrative penalty notice in respect thereof was issued.

(13) Notwithstanding subsection (12), data relating to administrative penalties may be kept by the Commissioner if that data consists of statistical information that does not reveal the identity of, or any other personal information relating to, any person to whom an administrative penalty notice is issued.

(14) Information relating to administrative penalty notices may only be published by the Commissioner if it is statistical information as described in subsection (13).

Legal
proceedings.

255.—(1) Where a person charged with an offence under a customs law has absconded, that person may be tried, convicted and sentenced in that person's absence.

(2) An officer shall be deemed to be a competent witness at the trial of any matter relating to the enforcement of a customs law notwithstanding that the officer may be entitled to a reward upon the conviction of the party charged in the matter.

(3) In any legal proceedings concerning a customs law—

- (a) where any book or document submitted or kept under a customs law is required as evidence in any court as to the

transaction to which it refers, a copy of the same, certified by an officer to be a true copy thereof, shall be admissible for that purpose without the production of the original; and

- (b) copies of official documents certified to be true copies under the hand and seal or stamp of the office of—
- (i) any of the principal officers responsible for customs and excise in any jurisdiction having reciprocal arrangements with Jamaica in respect of the certification of documents for the purpose of any customs law;
 - (ii) any comptroller of revenue in any Commonwealth country or such other country as may be prescribed;
 - (iii) any Jamaican Consul or Vice-Consul in any other country,

shall be received as *prima facie* evidence of the contents thereof.

256.—(1) Notwithstanding anything contained in any other law, where a court imposes a monetary penalty for an offence under this Act, and the penalty is not paid, the court may order that in *lieu* of payment of that penalty the offender be imprisoned for a term not exceeding—

Further provisions in respect of penalties and remedies, on conviction.

- (a) one year, in any case where the monetary penalty concerned is one million dollars or less;
- (b) five years, in any case where the monetary penalty concerned exceeds one million dollars.

(2) Where in respect of any offence under this Act it is established that—

- (a) while engaged in the commission of the offence, the offender—
 - (i) used force, or the threat of harm to any person or property; or

(ii) was disguised in any way to conceal the offender's identity; or

(b) there are any other circumstances which the court considers to have aggravated the offence,

the offender shall, in *lieu* of the penalty that would otherwise be applicable for the offence, be liable on conviction to a penalty not exceeding three times the amount of that otherwise applicable penalty.

(3) Where a person is convicted of an offence under this Act, the court may, in addition to any penalty imposed under this Act, order the person convicted to pay a fixed sum as compensation to any person who has suffered loss as a result of the commission of the offence.

(4) An order under subsection (3) shall be without prejudice to any other remedy which the person who has suffered loss may have under any other law.

(5) The court may make an order under subsection (3) of its own motion or upon the application of any person in accordance with subsection (6).

(6) A person who has suffered loss as a result of the commission of the offence under this Part may apply in accordance with rules of court for an order under subsection (3), at any time before sentence is passed on the person against whom the order is sought.

Place where offence may be tried.

257. Notwithstanding anything contained in any other law, in any case where a question arises as to where in Jamaica an offence under a customs law is committed, the person alleged to have committed the offence may be tried before the Parish Court having jurisdiction in the place where the person is—

(a) arrested for the offence; or

(b) landed, if arrested off land.

Value of goods and determination of penalty.

258.—(1) Where the amount of the penalty applicable in respect of the contravention of a customs law is to be calculated based on the value of goods concerned, that value shall be determined in accordance with section 20.

(2) A certificate signed by the Commissioner as to the value of goods, determined in accordance with subsection (1), and the import duty and tax payable thereon shall be accepted by a court as *prima facie* evidence of the value of those goods and the import duty and tax payable thereon.

PART XV—*General*

259. The Commissioner may exercise any of the powers given to the Commissioner under this Act in the contiguous zone as defined by section 2 of the Maritime Areas Act, for the purposes relating to customs specified in section 20 of that Act. Exercise of powers in contiguous zone.

260.—(1) Subject to section 262(2), the Minister may make regulations in order to give effect to the provisions of this Act and, except as provided in section 261, prescribing anything required to be prescribed under this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—

- (a) the charging and recovery of fees in respect of any matter under this Act;
- (b) the manner in which, and the persons to whom, fees and other charges under this Act are to be paid;
- (c) the remission, refund or waiver of, or the exemption from, fees or other charges (not including duty and tax) payable under this Act;
- (d) the rate of interest to be paid in respect of an overdue debt for the purposes of section 8, and the circumstances and manner in which such interest shall be paid;
- (e) the licensing of customs brokers.

261.—(1) Subject to section 262(2), the Commissioner may make rules in respect of any matter required to be determined, directed or prescribed by Rules under this Act and, without prejudice to the generality of the foregoing, such rules may make provision in respect of— Rules.

- (a) the communication systems administered by the Commissioner for the implementation of the customs laws,

including the conditions and requirements for electronic transactions with the Commissioner;

- (b) the form and contents of any report, notice, document or other information required to be submitted to the Commissioner or an officer, under this Act, and the manner of such submission;
- (c) the circumstances and manner in which, and the conditions on which any report, notice, or other document referred to in paragraph (b) may be amended;
- (d) subject to the provisions of this Act, the records that persons to whom this Act applies shall keep for the purposes of this Act, and the manner in which, period for which, and place at which, those records shall be kept;
- (e) the form of any notice required to be issued by the Commissioner under this Act;
- (f) the days and hours during which the services of the Customs Agency shall be provided to the public, and the working hours of officers for the purposes of doing anything required under the customs laws;
- (g) the provision of statements of accounts of the application of the proceeds of the sale of goods under section 122;
- (h) the issue by the Commissioner of non-binding advice on any matter;
- (i) subject to the provisions of all applicable laws, the procedure for the conduct of searches of premises, places, persons or things, under this Act (and different procedures may be specified for different types of searches);
- (j) the effective administration and control of Government warehouses; and
- (k) the conduct of activities in customs controlled areas, including with respect to the security of such areas.

(2) Rules made under subsection (1) shall be published in the *Gazette* and shall come into operation upon the expiration of fourteen days from the date of such publication.

(3) No rule made under this section shall be construed to have retroactive effect.

262.—(1) The Commissioner shall, on the public website of the Customs Agency and in such other manner as the Commissioner considers appropriate and expedient, publish or otherwise make freely available the customs laws, such administrative guidance and other information as the Commissioner considers relevant for publication in respect of the customs laws, and all information as to the applicable fees and forms required under this Act. Publications.

(2) Before any regulations or rules under this Act are brought into operation, the person responsible for making those regulations or rules (as the case may be) shall cause them to be brought to the attention of the public by publishing them on the public website of the Customs Agency, together with a notification inviting the public to submit comments on those regulations or rules within a specified period, not being less than twenty-one days before the regulations or rules (as the case may be) are brought into operation.

(3) The person responsible for making the regulations or rules shall revise the regulations or rules (as the case may be) as that person considers appropriate having regard to the comments submitted under subsection (2), before the regulations or rules are brought into operation.

(4) Subsections (2) and (3) shall not apply to any provisions relating to national security or which are necessary in the public interest, or in the event of any public emergency, so however, that such provisions shall be subject to negative resolution.

263.—(1) Unless exempted by Rules, every person who conducts business as a declarant, an importer, exporter, customs broker, carrier, cargo aggregator, operator of a customs controlled area, warehouse keeper, airport manager, port manager, person concerned with the coasting trade, agent, or other person who conducts business under any customs law, shall keep, or cause to be kept, in Jamaica in Records of
customs
business.

such form and manner as may be prescribed by Rules, all documents relating to the transaction of that business, for a period of seven years from the date of the particular transaction and make them available as required under subsection (2).

(2) A person to whom subsection (1) applies shall, within thirty days after being required to do so by the Commissioner or such longer period as the Commissioner may allow—

- (a) make available, to the Commissioner, the documents that the person is required to keep under that subsection, and any copies of such documents that the Commissioner may require;
- (b) answer any question relevant to any matter arising under this Act in respect of those documents; and
- (c) provide such facilities and assistance as an officer may require for the examination of the documents.

(3) A person who contravenes subsection (1) or (2)(a) commits an offence.

(4) A person who contravenes subsection 2(c) commits an offence.

264.—(1) The Commissioner may, by notice in writing require a person to whom section 263(1) applies, to produce, for inspection by an officer, any documents that the Commissioner considers relevant or necessary for the purposes of an investigation or audit under this Act.

Production of documents.

(2) A person required to produce a document under subsection (1) shall do so within thirty days after receipt of the notice or such longer period as the Commissioner may allow, and if the person fails to do so, the person commits an offence.

(3) It shall be a defence to any proceedings for non-compliance with subsection (2) for the person to show that the person had a lawful excuse for not producing the document.

265.—(1) Rules may prescribe the form and manner in which any document required to be kept under this Act shall be kept.

Manner in which documents are to be kept.

(2) If a document required to be kept under this Act is stored electronically, the person required to keep the document shall, at the request of an officer, cause the document to be made available to the officer in a form that—

- (a) is legible and intelligible without the need for any password, key, code or other method of deciphering it; and
- (b) can be taken away by the officer, and if the person fails to do so the person commits an offence.

(3) Where the Commissioner requires an original document to be produced in respect of any imported or exported goods, the Commissioner may—

- (a) require the document to be submitted in duplicate, and retain the duplicate; or
- (b) retain the original, if the document is not submitted in duplicate.

266.—(1) The Commissioner may take possession of, and retain, any document required to be produced under this Act.

Retention of documents by Commissioner.

(2) If the Commissioner takes possession of a document pursuant to subsection (1) or section 265(3)(b), the Commissioner shall provide the person from whom possession was taken with a copy thereof, certified under the seal of the Commissioner as a true copy.

(3) Every copy certified under subsection (2) is admissible as evidence in all courts and tribunals, and for all purposes, as if it were the original.

(4) Where the Commissioner retains a document obtained by the commissioner under this section or section 263 or 265, the Commissioner shall issue to the person from whom the document was obtained a receipt for the document, in such form as may be prescribed by Rules.

267.—(1) Subject to any express provision to the contrary in this Act, the proper officer may, at all reasonable times, enter any place where any document required to be kept under this Act is located and audit or examine the document, either in relation to specific transactions or to assess the adequacy and integrity of the method by which the document is created or stored.

Audit or examination of documents.

(2) For the purposes of subsection (1), the officer—

- (a) shall, subject to the provisions of this Act governing the entry and search of places, have full and free access to all lands, buildings, and other places, where any document that the officer considers—
 - (i) necessary or relevant for collecting any duty or tax due under any customs law or for enabling the performance of the functions of the proper officer; or
 - (ii) likely to provide information required for the purpose of enforcing any customs law, is located; and
- (b) may take extracts from, or copies of, any such document.

(3) A person in possession of any document referred to in this section, who refuses to permit the officer to audit, examine or take extracts or copies of the document, commits an offence.

Method of conveying notices, directions and other documents.

268.—(1) Any notice, direction, or other document required to be given by the Commissioner or an officer to any person under this Act may be given by—

- (a) delivering it to the person by hand;
- (b) sending it to the person by registered post addressed to that person's place of address as last supplied to the Commissioner by the person;
- (c) telefaxing it to the person at such telefax number as is supplied to the Commissioner by the person; or
- (d) transmitting it to the person electronically at such address as is supplied for that purpose to the Commissioner by the person.

(2) Where a person is required or permitted to give any document to the Commissioner, the document may be given to the Commissioner by—

- (a) delivering it by hand, addressed to the Commissioner at any customs office;

- (b) sending it by post addressed to the official business address of the Commissioner;
- (c) telefaxing it to the official number designated by the Commissioner for the receipt of telefaxes; or
- (d) transmitting the document electronically in the manner prescribed by Rules.

(3) Subsections (1) and (2) do not apply to a document in any case where this Act specifies a method of delivery for the document.

269.—(1) Every document submitted to the Commissioner for the purpose of any customs law shall be in such form as may be prescribed by Rules. Form of documents.

(2) Where any document required for the purposes of any customs law contains any words that are not in the English Language, the person required to provide the document shall, in accordance with Rules, provide with the document a correct translation of those words into the English Language.

(3) Where any declaration or other document—

- (a) is required by any customs law to be signed in the presence of the Commissioner or any particular officer; and
- (b) is signed in the presence of a witness who is known to, and approved by, the Commissioner as a witness for the purposes of this section,

the declaration or other document (as the case may require) shall be as valid as if it had been signed in the presence of the Commissioner or officer in whose presence it is required to be signed.

(4) Where the Commissioner is satisfied that any document referred to in subsection (1)—

- (a) contains any error of fact not affecting the amount of any assessment of duty and tax, fees or other charges payable under the customs laws; and

- (b) the interest of the integrity or accuracy of the document, or the proper implementation of the customs laws, necessitates the correction of the error,

the Commissioner may at any time correct the error, at the Commissioner's own instance or on the application of any person.

(5) Rules shall specify the witnesses known to, and approved by, the Commissioner for the purposes of subsection (3)(b).

Appointment
of agents.

270.—(1) This section applies to the appointment of agents by persons who conduct business under the customs laws.

(2) Subject to the provisions of this section, any action required to be performed by a declarant, or other person, conducting a transaction with the Commissioner, under this Act may be performed by an agent appointed in accordance with this section.

(3) A person shall not act as an agent unless appointed in accordance with this section.

(4) The appointment of the agent shall be evidenced in writing, in the manner prescribed by Rules.

(5) A person shall not be eligible to be appointed as an agent under this section if the person is not ordinarily resident in Jamaica, except in such circumstances as are specified by Rules.

(6) Rules made for the purposes of this section may—

- (a) identify the categories of persons entitled to act as agents;
- (b) specify the rights and responsibilities of agents;
- (c) specify conditions under which the Commissioner may decline to recognize, or carry out transactions with, an agent; and
- (d) prescribe the form for the appointment of an agent.

(7) When transacting business under this Act, an agent shall first disclose to the Commissioner the fact that he or she does so as an agent, and if required to do so by the Commissioner, shall produce to the Commissioner the form of appointment evidencing that person's appointment as agent in accordance with this section.

(8) A person who fails to make a disclosure, or who is unable to produce evidence of the appointment as required under subsection (7), shall be deemed to be acting on that person's own behalf and shall be personally liable in so acting.

(9) Subject to subsections (10) and (11), for the purposes of this section, an agent shall be jointly and severally liable with the principal, in respect of the acts performed as agent on behalf of a person who is not resident in Jamaica.

(10) A person who conducts a transaction with the Commissioner, as a customs broker, on behalf of another person is not liable for the payment of the duty and tax, fees and charges, in respect of the goods concerned, if—

- (a) the customs broker did not aid or abet the failure to pay;
- (b) took all steps to prevent the failure to pay; and
- (c) upon becoming aware of the failure to pay, promptly notified the Commissioner of the failure.

(11) Nothing in subsection (10) shall be construed as relieving a customs broker from liability in circumstances where—

- (a) the name and address of the person on whose behalf the customs broker purports to act is not disclosed on the goods declaration; or
- (b) payment of duty and tax was deferred on the basis of a deferment granted to the customs broker.

271. The Government shall not be held liable for any damage, loss, or expense, incurred by any person arising from any action or decision taken in good faith in the exercise of any power, duty or function of the Government, under this Act or any other customs law. Exclusion of liability.

272. The Commissioner may conclude agreements with persons, or with ministries, departments, public bodies (as defined by the Public Bodies Management and Accountability Act), or Executive Agencies (as defined by the Executive Agencies Act), of Government for the purpose of— Agreements.

- (a) improving the ability of the respective parties to execute their duties;

- (b) enhancing the level of cooperation between the respective parties;
- (c) securing and expediting the clearance and release of goods;
- (d) enhancing the security of goods, persons, or places, that are subject to this Act; or
- (e) for any other purpose in connection with this Act or any other customs law.

Payment of rewards.

273. The Commissioner may, with the approval of the Minister, pay a reward to a person who provides information to the Commissioner about an offence against any customs law, or who assists in the recovery of any monetary penalty payable to the Commissioner under any customs law.

Discretionary power in special circumstances.

274. The Commissioner may permit the clearance, unloading, removal or loading of goods, and the reporting and customs processing of vessels and aircraft, in such form and manner as the Commissioner may direct to meet the exigencies in any case to which the customs laws may not be conveniently applicable.

Powers of officers.

275.—(1) For the purpose of enforcing the customs laws, a proper officer shall have the same powers, authorities and privileges as a constable in respect of the powers of—

- (a) entry and search of premises and other places, and means of transport;
- (b) seizure and detention of items and evidence;
- (c) search, detention and arrest of persons;
- (d) calling on and questioning persons;
- (e) the inspection of goods and documents; and
- (f) the investigation of offences under this Act or any other customs laws,

in accordance with Part XIII.

(2) A person who obstructs an officer who is performing an enforcement function under Part XIII, or fails to comply with a lawful request of the officer made in the performance of any such function, commits an offence.

276.—(1) Any of the duties imposed on the Commissioner by this Act or any other enactment may be performed, either in place of or concurrently with the Commissioner, by any officer so authorised by the Commissioner, subject to such conditions (if any) as the Commissioner thinks fit.

Acts on
behalf of
Commissioner.

(2) Subject to subsection (9), the Commissioner may, pursuant to an agreement made under section 272, delegate, in accordance with subsection (3) any of the Commissioner's powers under this Act to such individual (not being an officer), Ministry of Government, public body as defined by the *Public Bodies Management and Accountability Act*, or Executive Agency as defined by the *Executive Agencies Act*, as the Minister considers suitably qualified for the purpose.

(3) A delegation under subsection (2) shall—

- (a) be in writing;
- (b) specify the entity to whom the delegation is made;
- (c) specify the functions delegated; and
- (d) state the period of the delegation, being a period not exceeding three years,

and notice of the delegation, and any suspension or revocation thereof, shall be published in the *Gazette* and by such other means as the Commissioner considers appropriate to bring the matter to the attention of the public.

(4) A delegation under subsection (2) may be renewed for successive periods.

(5) The Commissioner may suspend or revoke a delegation under subsection (2) in accordance with the terms of the agreement made under section 272 in respect of the delegation.

(6) Notwithstanding subsection (5), the Commissioner may revoke a delegation—

- (a) on ground of any neglect of duty or misconduct of the delegate;
- (b) at the written request of the delegate; or

- (c) where the delegate is incapacitated due to illness or any other cause such that the delegate is unlikely to be able to carry out the functions delegated.

(7) Where a delegation is suspended or revoked under this section, the delegate shall surrender to the Commissioner all documents and other items received in connection with the delegation.

(8) Every person employed in a duty or service relating to a customs matter—

- (a) by the order, or with the express concurrence, of the Commissioner; or
- (b) pursuant to a power of delegation under this section, is deemed, in respect of that duty or service, to be an officer.

(9) Nothing in this section shall be construed as entitling the Commissioner to delegate the power to make rules under section 261 or any other provision of this Act.

(10) Every act required by law to be done at a particular place within a customs controlled area, if done within that customs controlled area at any place specified by the Commissioner for such purpose, is deemed to be done at the particular place so required by law.

Functions and
duties of
officers.

277.—(1) An officer may exercise the powers, and shall perform the duties—

- (a) assigned to officers generally, or to that officer specifically; or
- (b) delegated to officers generally, or to that officer specifically, under this Act or any other law.

(2) The Commissioner shall issue an identification card, in such form as may be prescribed by Rules, to each officer.

(3) An officer purporting to any person to exercise any power under this Act shall, on request by that person, produce the identification card issued to that officer under subsection (2), for inspection.

(4) A person who ceases to be an officer shall return the identification card issued to that person under subsection (2) to the Commissioner.

278. Unless otherwise expressly provided, the Minister may by instrument in writing delegate any of the Minister's functions under this Act, other than the power to make regulations, to the Commissioner. Delegation by Minister.

279.—(1) Subject to subsection (2)— Confidentiality.

- (a) every person having an official duty under, or being employed in the administration of, this Act, or coming into possession of any information by virtue of an authorisation or agreement referred to in subsection (2), shall regard and deal with as confidential, all documents and other information in respect of matters under this Act; and
- (b) no person referred to in paragraph (a), who has possession or control over any document or other information, in respect of any matter under this Act, shall disclose the document or anything therein, to any person,

and a person who contravenes this section commits an offence.

(2) Nothing in this section shall prevent the disclosure of a document or other information—

- (a) by the Commissioner, or any person so authorised by the Commissioner, for the purposes of this Act;
- (b) by the Commissioner, or a person authorised by the Commissioner, to any department of Government, public body (as defined by section 2 of the *Public Bodies Management and Accountability Act*) or Executive Agency (as defined by section 2 of the *Executive Agencies Act*) for the purpose of the performance of a function under any law;
- (c) by the Commissioner pursuant to a requirement under any other law, or any treaty, international agreement or arrangement, to which Jamaica is a party;
- (d) by the Commissioner to any person pursuant to an agreement entered into between the Commissioner and that person for

the purpose of assisting the Commissioner in carrying out any function under this Act;

- (e) by any person, in accordance with an authorisation for such disclosure, given by the Commissioner pursuant to an agreement referred to in paragraph (d); or
- (f) with the consent of the person who provided the document, if the disclosure with that consent is not contrary to any other law or to any duty of confidentiality owed by the Commissioner to any other individual.

Amendments
to other
enactments.

280.—(1) The *Council of Legal Education Act* is amended in—

- (a) the marginal note to section 5 by deleting the words “and transfer tax” and substituting therefor the words “, transfer tax and import duties and taxes”;
- (b) in section 5 by inserting the following as subsection (4)—

“ (4) No import duty or tax shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the Council of Legal Education and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Council.”.

(2) The *General Consumption Tax Act* is amended—

- (a) in section 16—
 - (i) by inserting next after subsection (2) the following as subsection (2A)—
 - “ (2A) Where the prescribed goods are imported goods, the reference to the Commissioner shall be construed as a reference to the Commissioner of Customs.”;
 - and
 - (ii) in subsection (5), by deleting the word “Queen’s” and substituting therefor the word “Government”;

- (b) in the First Schedule, in item 1 under the heading “Group 11—*Motor Vehicles*”—
- (i) by deleting the words “US\$35,000 CIF” and substituting therefor the words “the amount specified in item 1A”;
 - (ii) in paragraph (d) by—
 - (A) inserting immediately before the words “persons employed” the words “the following”;
 - (B) deleting the word “or” at the end of sub-paragraph (ii), re-numbering sub-paragraph (iii) as sub-paragraph (iv) and inserting the following as sub-paragraph (iii)—
 - “ (iii) bursars;”;
 - (C) inserting next after sub-paragraph (iv) (as renumbered) the following sub-paragraphs—
 - “ (v) guidance counsellors;
 - (vi) deans of discipline;”;
 - (iii) in paragraph (g) by inserting immediately before the word “nurses” the word “registered”;
 - (iv) by deleting paragraph (h) and inserting next after paragraph (g) the following paragraphs—
 - “ (h) persons recruited overseas by the University of Technology, for employment at that University;
 - (i) persons who, having held an overseas scholarship awarded by the Government—
 - (i) return to Jamaica on completion of the courses to which the scholarship relates; and
 - (ii) are employed to the Government;”;

(v) by deleting paragraphs (p), (q), (r) and (s) and substituting therefor the following—

“ (p) chairpersons of Municipal Corporations and Mayors of City Municipalities;

(q) councillors of Municipal Corporations;

(r) lecturers who are members of the Mona Campus Chapter of the West Indies Group of University Teachers, and who are eligible for commuted allowance or full upkeep allowance;

(s) lecturers employed to the University of Technology, who are eligible for commuted allowance or full upkeep allowance;”;

(vi) by deleting paragraph (w) and substituting therefor the following—

“ (w) officers who are employed to any of the following entities and are eligible for commuted allowance or full upkeep allowance—

4-H Clubs

Architects Registration Board

Banana Board

Bath Fountain of St. Thomas
the Apostle

Caribbean Maritime University

Civil Aviation Authority

Consumer Affairs Commission

Council of Community
Colleges of Jamaica

Council of Professions
Supplementary to
Medicine

Dental Council

Early Childhood Commission

Fair Trading Commission

Hazardous Substances
Regulatory Authority

Institute of Jamaica

Institute of Sports

Integrity Commission

Island Traffic Authority

Jamaica Agricultural Society

Jamaica Anti-Dumping
Commission

Jamaica Council for Persons
with Disability

Jamaica Cultural Development
Commission

Jamaica Dairy Development
Board

Jamaica Intellectual Property
Office

Jamaica International Financial
Services Authority

Jamaica Library Services

Jamaica National Heritage
Trust

Jamaica Tourist Board

Jamaica Promotions
Corporation

Legal Aid Council
Maritime Authority of
Jamaica
Medical Council
Milk River Hotel and Spa
National Commission of
Science and Technology
National Council on
Education
National Library of Jamaica
National Parenting Support
Commission
National Solid Waste
Management Authority
North East Regional Health
Authority
Nursing Council
Office of Disaster
Preparedness and
Emergency Management
Pharmacy Council
Planning Institute of Jamaica
Police Civilian Oversight
Authority
Private Security Regulation
Authority
Professional Engineers
Registration Board
Public Broadcasting
Corporation of Jamaica

Quarantine Authority
Rural Agricultural
Development Authority
Scientific Research Council
South East Regional Health
Authority
Southern Regional Health
Authority
Special Economic Zones
Authority
Statistical Institute of Jamaica
Tax Administration Jamaica
Tourism Enhancement Fund
University Council of
Jamaica
University Hospital of the
West Indies
University of Technology
Water Resources Authority
Western Regional Health
Authority,

and any statutory body that the Minister may, by order published in the *Gazette*, amend this paragraph to include;”;

- (vii) in paragraph (x) by inserting next after the words “Regional Supervisors” the words “and who are eligible for commuted allowance or full upkeep allowance”;

(c) in the First Schedule, under the heading “Group 11—*Motor Vehicles*” by inserting next after item 1 the following item—

“ 1A. The specified amount for the purposes of item 1 is, in the case of—

- (a) the Prime Minister or a former Prime Minister, US\$60,000 CIF;
- (b) the Leader of the Opposition, the President of the Senate, the Speaker of the House of Representatives, a Cabinet Minister or the Attorney-General, US\$55,000 CIF;
- (c) a member of Parliament, other than a member specified in paragraph (a) or (b), US\$50,000 CIF; and
- (d) any other person referred to in item 1, US\$45,000 CIF.”.

(3) The *Proceeds of Crime Act* is amended in the Second Schedule thereto by renumbering paragraph 19 as paragraph 20 and inserting the following as paragraph 19—

“19. An offence under section 40(5) of the Customs Act.”.

Repeal of
Customs Act.

281. The Customs Act, 1941, is hereby repealed.

SECOND SCHEDULE (Section 20)

Valuation of Goods

1.—(1) In this Schedule—

“customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

“family members”, in relation to a person, means –

- (a) the person’s—
 - (i) spouse;
 - (ii) child, adopted child, step-child, grand-child or any other child wholly or mainly maintained by that person;
 - (iii) brother or sister;
 - (iv) uncle or aunt;
 - (v) nephew or niece;
 - (vi) mother, father or adoptive parent;
 - (vii) stepmother or stepfather; or
 - (viii) lineal ancestor or descendant;
or
- (b) any person who is a family member of a spouse of a person referred to in any of sub-paragraphs (a)(ii) to (viii);

“goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods;

“identical goods” means, subject to sub-paragraph (2), goods that an officer is satisfied—

- (a) are produced in the same country at or about the same time as the goods being valued; and
- (b) are the same in all respects as the goods being valued, notwithstanding minor differences in appearance;

“produced” includes grown, manufactured and mined;

“seller” means the person who has the legal or beneficial interest in the goods at the time that the contract of sale is concluded and to whom the proceeds of sale will ultimately be paid exclusive of any commission or fee;

“similar goods” means, subject to sub-paragraph (3), goods that an officer is satisfied—

- (a) are produced at or about the same time in the same country as the goods being valued; and
- (b) although not alike in all respects to the goods being valued, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable;

“spouse” includes—

- (a) a single woman who, for a period of not less than five years, has cohabited with a single man as if she were in law his wife; and
- (b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband,

and “single woman” or “single man” for the purposes of this definition includes a widow or widower, respectively, or a divorcee.

(2) References in sub-paragraph (1) to “identical goods” and “similar goods” respectively, do not include references to goods which incorporate or reflect engineering, development, artwork, design work and plans and sketches for which no adjustment has been made under paragraph 8(b)(iv) on the ground that such engineering, development, artwork, design work and plans and sketches were undertaken in Jamaica.

(3) In determining whether or not goods are similar, the quality of the goods, their reputation and any registered trade mark in respect of those goods or a class of goods to which they belong are among the factors that may be taken into account.

(4) For the purpose of this Schedule—

- (a) a buyer and a seller of imported goods shall be deemed to be related only if—
- (i) they are officers or directors of one another's business;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the voting shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they control, directly or indirectly, a third person; or
 - (viii) they are family members;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;
- (c) persons who are associated with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria specified in sub-paragraph (a);
- (d) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five days immediately preceding or immediately following the day on which the other event occurs.

2.—(1) Where the conditions specified in paragraph 3 are fulfilled, the customs value of imported goods shall be determined under that paragraph.

(2) Subject to sub-paragraph (3), where the customs value of imported goods cannot be determined under paragraph 3, it

Customs value, sequential application and the fallback method.

shall be determined by proceeding sequentially through paragraphs 4 to 7, to the first such paragraph under which the customs value can be determined, but the order of application of paragraphs 6 and 7 shall be reversed if the importer so requests and the Commissioner agrees.

(3) The provisions of the next paragraph in the sequence established by sub-paragraph (2) shall be applied only where the customs value of imported goods cannot be determined under a particular paragraph.

(4) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, the customs value shall—

- (a) be determined using such means as are reasonable having regard to the principles and general provisions of this Schedule; and
- (b) be based, as far as practicable, on previously determined customs values.

(5) No customs value of imported goods shall be determined under sub-paragraph (4) on the basis of—

- (a) the selling price in Jamaica of goods produced in Jamaica;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with paragraph 7;
- (e) the price of the goods for export to a country other than Jamaica;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3.—(1) Subject to paragraphs 2 and 8, the customs value of imported goods determined under this paragraph shall be the transaction value, being the price actually paid or payable for the goods when sold for export to Jamaica, in the circumstances referred to in sub-paragraph (2) and adjusted in accordance with paragraph 8 or, where appropriate, paragraph 9.

(2) The circumstances are that—

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—
 - (i) are imposed, or required, under any law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
- (d) the buyer and the seller are not related or, where they are related, the transaction value is acceptable for customs purposes under sub-paragraph (3).

(3) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), in circumstances where the buyer and seller are related, the Commissioner shall—

- (a) take account of the circumstances of the sale; and
- (b) accept the transaction value stated, unless, on the basis of information provided by the declarant or otherwise, the Commissioner considers that there are grounds for believing that the relationship influenced the price.

(4) The Commissioner shall inform the declarant in writing of the grounds referred to in sub-paragraph (3) and give the declarant a reasonable opportunity to be heard.

(5) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) if, subject to sub-paragraph (6), the declarant demonstrates that such value closely approximates to one of the following values occurring at or about the same time—

- (a) the transaction value in sales of identical or similar goods for export to Jamaica between buyers and sellers who are not related in any particular case;
- (b) the customs value of identical or similar goods, as determined under paragraph 6;
- (c) the customs value of identical or similar goods, as determined under paragraph 7.

(6) In applying any of the provisions of sub-paragraph (5) account shall be taken of—

- (a) demonstrated differences in commercial levels and quantity levels;
- (b) the matters specified in paragraph 8; and
- (c) costs incurred by the seller, in sales in which the seller and the buyer are not related, that are not incurred by the seller in sales in which the seller and the buyer are related.

(7) For the purpose of sub-paragraph (1), the price actually paid or payable is, subject to sub-paragraphs (8) and (9), the total payment made, or to be made, for the imported goods by the buyer to, or for the benefit of, the seller.

(8) The payment referred to in sub-paragraph (7) may be made either directly or indirectly without necessarily taking the form of a transfer of money and shall include—

- (a) all payment that as a condition of sale of the imported goods, are made or to be made by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
- (b) any settlement by the buyer, whether in whole or in part of a debt owed by the seller.

(9) Except to the extent allowed under paragraph 8(1) or (2)—

- (a) any activities (including the marketing of imported goods) undertaken by a buyer on the buyer's own account shall not be regarded for the purpose of this paragraph as an indirect payment to the seller, whether or not such activities are of benefit to the seller or were undertaken by the buyer pursuant to an agreement with the seller; and
- (b) the cost of any such activity shall not be added to the price actually paid or payable in determining the customs value of the imported goods.

(10) The following charges or costs shall not be taken into account in determining the customs value of imported goods if such charges or costs may be distinguished from the price actually paid or payable for those goods—

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of goods such as industrial plant machinery or equipment;
- (b) the cost of transportation after importation;
- (c) customs duties and other taxes payable in Jamaica by reason of the importation or sale of the goods.

4.—(1) Subject to sub-paragraph (2) and paragraph 2, the customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to Jamaica at or about the same time as the goods being valued.

Determina-
tion of
customs value
on basis of
transaction
value of
identical
goods sold for
export.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, identical goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and

necessary (whether resulting in an increase or a decrease in value) having regard to the differences attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8(1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of identical imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3).

Determina-
tion of
customs value
on basis of
transaction
value of
similar goods
sold for
export.

5.—(1) Subject to sub-paragraph (2) and paragraph 2, the customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to Jamaica and exported at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or

- (b) in the absence of such a sale, similar goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the difference attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities is that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of similar imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

6.—(1) Subject to paragraph 2, where imported goods or identical or similar imported goods are sold in Jamaica in the same condition in which they are imported, the customs value of those goods shall be determined in accordance with sub-paragraph (2).

Value based on unit price of greatest aggregate quantity: (the deductive method).

(2) The customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, to persons who are not

related to the seller at or about the time of the importation of the goods being valued, subject to deductions for the following—

- (a) subject to sub-paragraph (10), the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in Jamaica of imported goods of the same class or kind;
- (b) the usual costs of transportation and insurance and other associated costs normally incurred within Jamaica; and
- (c) the customs duties and other duties or taxes payable in Jamaica by reason of the importation or sale of the goods.

(3) If neither the imported goods nor identical or similar imported goods is sold at or about the time of importation of the goods being valued, then, if the importer so requests, the customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in Jamaica in the same condition in which they were imported and at the earliest date after their importation, being a date not later than ninety days after the date of such importation, subject to the deductions specified in sub-paragraph (1).

(4) Subject to sub-paragraph (5), if neither the imported goods nor identical or similar imported goods are sold in Jamaica in the condition in which they were imported, then the Commissioner may determine that the value of the goods shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Jamaica who are not related to the seller.

(5) In determining value under sub-paragraph (4), deductions shall be made in respect of—

- (a) the value added by such further processing, based on quantifiable data and calculated on the bases of usual formulae and methods and practices of the industry concerned; and
- (b) the matters specified in sub-paragraph (2) (a), (b) and (c).

(6) Subject to sub-paragraph (7), the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units of the goods is sold in sales made to persons who are not related to the seller, being sales occurring at the first commercial level after the importation at which the sales take place.

(7) In determining the unit price for the purposes of this paragraph, no account shall be taken of any sale in Jamaica to a person who supplies any goods or services specified in paragraph 8(1)(b), directly or indirectly, free of charge or at a reduced cost, for use in connection with the production and sale for export of the imported goods.

(8) Subject to sub-paragraph (9), the amount allowable under sub-paragraph (2)(a) as a deduction for profit and general expenses shall be taken as a whole and shall be determined on the basis of figures and other information supplied by or on behalf of the importer.

(9) Where it appears to an officer that the figures or other information so supplied are not consistent with verifiable figures and information pertaining to sales of imported goods of the same class or kind, the officer may determine the amount allowable on the basis of figures and information other than those supplied.

(10) In determining for the purposes of sub-paragraph (2) (a) the commissions or the additions usually made for profit and general expenses, the question whether imported goods are of the same class or kind shall be decided on the facts of each particular case, having regard to all the circumstances, and taking into account where possible, information, pertaining to the sale of the narrowest group or range of imported goods of the same class or kind.

(11) A reference to goods of the same class or kind includes a reference to goods of the same class or kind imported from –

- (a) the same country as the goods being valued; and
- (b) from other countries.

(12) For the purposes of sub-paragraph (3), “the earliest date” means the date by which sales of the goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

Determina-
tion of value
based on
computed
value.

7. —(1) Subject to paragraph 2 and this paragraph, the customs value of imported goods shall be determined under this paragraph on a computation consisting of the sum of—

- (a) the cost or value of the materials and processing used to produce the imported goods;
- (b) an amount for profit and general expenses equivalent to the amount usually reflected in sales of goods that are of the same class or kind as the goods being valued and that are made in the country where the goods are produced for export to Jamaica; and
- (c) the total of all costs and charges referred to in paragraph 8(1)(e).

(2) The cost referred to in sub-paragraph (1)(a) shall include—

- (a) the costs referred to in paragraph 8(1)(a)(ii) and (iii);
- (b) the value, duly apportioned, of such goods or services referred to in paragraph 8 (1) (b) as have been supplied, directly or indirectly, by the buyer for use in connection with the production of the imported goods;
- (c) the value of such goods and services referred to in paragraph 8(1)(b)(iv) as are undertaken in Jamaica, to the extent only that they are charged to the producer,

and no cost or value as aforesaid shall be counted more than once in determining the computed value of imported goods.

(3) The cost or value referred to in sub-paragraph (1)(a) shall be determined on the basis of such commercial accounts supplied by or on behalf of the producer as relate to the production of the goods being valued and as are consistent with the generally accepted accounting principles applied in the country in which the goods are produced.

(4) For the purposes of sub-paragraph (1)(b)—

- (a) the amount for profit and general expenses shall, subject to sub-paragraph (b), be taken as a whole and shall be determined on the basis of figures or other information supplied by or on behalf of the producer;

(b) where it appears to an officer that the figures or other information so supplied are not consistent with the figures or other information usually attributable to sales of goods that—

- (i) are of the same class or kind as the goods being valued; and
- (ii) are made in the country where the goods are produced for export to Jamaica,

the officer may determine the amount for profit and general expenses on the basis of figures and information other than those supplied by or on behalf of the producer of the goods;

(c) the question whether goods are of the same class or kind as other goods shall be decided on the facts of each particular case, having regard to all the circumstances and taking into account, where possible, information pertaining to the sales for export to Jamaica of the narrowest group or range of goods of the same class or kind as the goods being valued;

(d) a reference to—

- (i) “general expenses” is a reference to the direct and indirect costs of producing and selling the goods for export, being costs not included under sub-paragraph (1)(a); and
- (ii) “goods of the same class or kind” means goods imported from the same country as the goods being valued.

8.—(1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods—

Certain charges to be included in customs value.

(a) the following costs, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods—

- (i) commission and brokerage, except buying commission;

- (ii) the costs of containers which, for customs purposes, are treated as one with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where they 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, to the extent that such value has not been included in the price actually paid or payable—
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork and design work, as well as such plans or sketches as are done outside of Jamaica and are necessary for the production of the imported goods;
- (c) royalties and licence fees, including payments in respect of patents, trademarks and copyright, related to the goods being valued payable by the buyer, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) subject to any reduction of freight charges by the Commissioner in accordance with section 20(4), the following costs and charges—
 - (i) the cost of transportation of the imported goods to the port or place of importation;

- (ii) the loading, unloading and handling charges associated with the transportation of the imported goods to the port or place of importation; and
- (iii) the cost of insurance.

(2) In determining the customs value of imported goods—

- (a) no additions shall be made to the price actually paid or payable for those goods, except as provided in this paragraph;
- (b) additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data; and
- (c) the transaction value of the goods shall not be determined under paragraph 3 in the absence of such data.

(3) Notwithstanding sub-paragraph (1)(c)—

- (a) in determining the customs value of imported goods, charges for the right to reproduce the goods in Jamaica shall not be added to the price actually paid or payable for those goods;
- (b) payments made by the buyer for the right to distribute or resell those goods shall not be added to the price actually paid or payable for the goods if such payments are not a condition of the sale for export of those goods to Jamaica.

(4) In this paragraph—

“buying commission” means fees paid by an importer to the importer’s buying agent for the service of representing the importer abroad in the purchase of the goods being valued;

“buying agent” means a person who acts for a buyer of goods for reward or hire.

9.—(1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3, if the requirements specified in sub-paragraph (2) are satisfied.

Interest charges to be excluded.

(2) The requirements referred to in sub-paragraph (1) are—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement is in writing;
- (c) where required by the Commissioner, the buyer can demonstrate that—
 - (i) such goods are actually sold at the price declared as the price actually paid or payable; and
 - (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.

(3) The provisions of sub-paragraphs (1) and (2) shall apply—

- (a) whether the finance is provided by the seller, a bank or another person; and
- (b) with such modifications as may be necessary in relation to any case where value is determined under a method other than the transaction value.

Software for
data
processing
equipment.

10.—(1) Where the value of the data or instructions recorded on any carrier medium for data processing equipment is distinguished or distinguishable from the cost or value of the medium itself, then, in determining the transaction value of the carrier medium, no account shall be taken of the value of the recorded data or instructions.

(2) For the purposes of this paragraph—

“carrier medium” shall not include integrated circuits, semi-conductors and similar devices or articles incorporating such circuits or devices;

“data or instructions” shall not include sound, cinematic or video recordings.

THIRD SCHEDULE

(Section 243)

Specified Offences

Offence	Penalty
Importing, concealing or other dealing in goods, contrary to customs laws.	
1. A person commits an offence if that person—	
(a) knowingly imports into Jamaica, or harbours or conceals, any prohibited goods or restricted goods, in contravention of the provisions of this Act or any other law prohibiting the importation of those goods;	A fine not exceeding three times— (a) the value of the goods; or (b) the duty and tax payable in respect of the goods, whichever is the greater;
(b) knowingly harbours or conceals any goods on which customs duty or tax is liable to be paid and has not been paid in whole or in part;	A fine not exceeding three times— (a) the value of the goods; or (b) the duty and tax payable in respect of the goods, whichever is the greater;
(c) imports, exports or otherwise deals with any goods in a manner contrary to the customs laws, with the intent to—	
(i) fraudulently evade the payment of any duty, tax, or customs charges;	A fine not exceeding— (a) three times the duty, tax and customs charges concerned; or

Specified Offences

Offence	Penalty
Impersonating an officer.	<p>(b) five million dollars, which ever is the greater.</p> <p>A fine not exceeding five million dollars.</p> <p>A fine not exceeding five million dollars, or imprisonment for a term not exceeding five years.</p>
Offences in relation to Customs System.	<p>(ii) evade any prohibition or other restriction imposed on the handling of or dealing in those goods.</p> <p>A fine not exceeding five million dollars.</p> <p>A fine not exceeding two million dollars.</p>
Offence under section 40(1).	<p>2. A person commits an offence if that person impersonates an officer (whether by assuming the name, appearance or character, of an officer or otherwise)—</p> <p>(a) for the purpose of doing, or procuring the doing of, any act which that person would not otherwise be entitled to do or procure to be done; or</p> <p>(b) for any unlawful purpose.</p> <p>3. A person commits an offence if that person, being an authorised user, or an employee or agent of an authorised user, fails to comply with any terms or conditions imposed on the authorised user in respect of use of the Customs System.</p> <p>4. An offence under section 40(1) (permitting entry or exit at or from a place other than a customs controlled port or customs controlled airport).</p> <p>Upon conviction—</p> <p>(a) before a Parish Court, a fine not exceeding</p>

Specified Offences

Offence	Penalty
Offence under section 275(2).	<p data-bbox="967 583 1122 779">five million dollars or imprisonment for a term not exceeding five years; or</p> <p data-bbox="922 804 1133 999">(b) before a Circuit Court, a fine, or imprisonment for a term not exceeding ten years.</p> <p data-bbox="873 1024 1138 1182">A fine not exceeding one million dollars or imprisonment for a term not exceeding twelve months.</p>
Offence under section 279.	<p data-bbox="873 1209 1081 1234">Upon conviction—</p> <p data-bbox="922 1276 1146 1539">(a) before a Parish Court, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years; or</p> <p data-bbox="922 1564 1133 1759">(b) before a Circuit Court, a fine, or imprisonment for a term not exceeding ten years.</p>

FOURTH SCHEDULE

(Sections 243
and 254)*Offences to Which Administrative Penalty
May Apply*

	Column 1	Column 2
	Offence	Penalty
Offence under section 32.	1. Without reasonable excuse, entering or refusing to leave customs controlled area, contrary to section 32.	A fine not exceeding five hundred thousand dollars.
Offence under section 33(4).	2. An offence under section 33(4), being an offence of— (a) concealing goods under customs control, in a manner calculated to deceive the Commissioner;	A fine not exceeding whichever is the greater of— (a) three million dollars; or (b) an amount equivalent to whichever is the greater of— (i) three times the value of the goods concealed; or (ii) three times the duty and tax payable on the goods concealed.

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
—	—
Offence	Penalty
—	—
<p>(b) without lawful excuse, tampering or interfering with, or destroying, goods under customs control.</p>	<p>A fine not exceeding whichever is the greater of—</p> <p>(a) three million dollars; or</p> <p>(b) an amount equivalent to whichever is the greater of—</p> <p style="padding-left: 2em;">(i) three times the value of the goods tampered or interfered with, or destroyed (as the case may be); or</p> <p style="padding-left: 2em;">(ii) three times the duty and tax payable on the goods tampered</p>

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
—	—
Offence	Penalty
—	—
	or inter- fered with, or des- troyed (as the case may be.
(c) without reasonable excuse—	A fine not exceeding two million dollars.
(i) removing (whether in whole or in part);	
(ii) damaging;	
(iii) tampering or interfering with any thing, knowing or having reasonable cause to know, that the thing is in use by, or for the use of, the Customs Agency; or	
(d) without lawful excuse, interfering with or taking possession of, any goods—	A fine not exceeding two million dollars.
(i) prohibited from importation or exportation under any law, and under customs control; or	

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
Offence	Penalty
<p>Offence under section 39.</p> <p>3. Embezzling or misappropriating, or unlawfully removing, converting or destroying goods deposited in customs controlled area, contrary to section 39.</p>	<p>(ii) liable to confiscation under any customs law.</p> <p>A fine not exceeding whichever is the greater of—</p> <p>(a) five million dollars; or</p> <p>(b) an amount equivalent to whichever is the greater of—</p> <p style="padding-left: 20px;">(i) three times the value of the goods embezzled, misappropriated, removed, converted or destroyed; or</p> <p style="padding-left: 20px;">(ii) three times the duty and tax payable on the goods</p>

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
—	—
Offence	Penalty
—	—
Offence under section 41(5).	<p style="text-align: right; margin-right: 20px;">em-bezzled, misappropriated, removed, converted or destroyed.</p> <p>A fine not exceeding whichever is the greater of—</p> <ul style="list-style-type: none"> (a) three million dollars; or (b) an amount equivalent to whichever is the greater of— <ul style="list-style-type: none"> (i) three times the value of the goods concerned; or (ii) three times the duty and tax payable on the goods concerned.
4. An offence under section 41(5) (unloading, removing or transferring goods contrary to the provisions of that section).	

*Offences to Which Administrative Penalty
May Apply*

	Column 1	Column 2
	Offence	Penalty
Offence under section 43.	<p>5.—(1) Leaving a customs controlled seaport or customs controlled airport, contrary to section 43(1) or (2).</p> <p>(2) Carrier of a vessel or aircraft permitting a person to embark or disembark contrary to section 43(1)(a).</p>	A fine not exceeding two million dollars.
Offence under section 45.	6. Carrier, of a vessel or aircraft departing without permission or without satisfying conditions for departure, contrary to section 45.	A fine not exceeding three million dollars.
Offence under section 47(1).	7. Failure to provide passenger information as required under section 47(1) (passenger information).	A fine not exceeding three million dollars.
Offence under section 50(1).	8. Failure to provide advance arrival and departure information as required under section 50.	A fine not exceeding two million dollars.
Offence under section 51(1).	9. Failure to submit report of arrival and departure as required under section 51.	A fine not exceeding one million dollars.
Offence under section 53(4).	10. Failure to submit an out-turn report as required under section 53.	A fine not exceeding two million dollars.
Offence under section 54(3).	11. Failure to give notification as to discrepancy in cargo, as required under section 54(3).	A fine not exceeding two million dollars.
Offence under section 78.	12. Delivering or knowingly taking delivery of goods other-	A fine not exceeding one million dollars.

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
Offence	Penalty
	wise than on the authority of a release notification, or failing to return goods so delivered, contrary to section 78.
Offence under section 79.	13. Failure to give a notification required under section 79. A fine not exceeding five hundred thousand dollars.
Offence under section 86(3).	14. Failure of transferee of ownership of goods to comply with requirements and conditions applicable under customs procedure or conditions of transfer, contrary to section 86(3). A fine not exceeding one million dollars.
Offence under section 88.	15. Failure to transport goods, that are not in free circulation, in accordance with section 88(1) or to comply with directions issued under section 88(2). A fine not exceeding two million dollars.
Offence under section 89.	16. Failure to report breakdown, accident, or other unforeseen event, in the course of transporting goods, as required under section 89. A fine not exceeding two hundred and fifty thousand dollars.
Offence under section 90, 143 or 144.	17. Failure to comply with a provision of section 90, 143 or 144 (loading or off-loading of goods destined for export, and transfer of goods between means of transport). A fine not exceeding two million dollars.
Offence under section 93(1).	18. Commencing transport of customs controlled goods before the goods are released for a transit procedure, contrary to section 93(1). A fine not exceeding one million dollars.

*Offences to Which Administrative Penalty
May Apply*

	Column 1	Column 2
	Offence	Penalty
Offence under section 93(8).	19.—(1) Failure to comply with provisions of section 93(2), (3), (4) or (6). (2) Failure to comply with provisions of section 93(5).	A fine not exceeding two million dollars. A fine not exceeding one million dollars.
Offence under section 95.	20. Transferring goods in contravention of section 95(1) or failing to comply with a direction issued under section 95(3).	A fine not exceeding one million dollars.
Offence under section 97(4).	21. An offence under section 97(4) (failure to warehouse, or removal of goods without permission).	A fine not exceeding whichever is the greater of— (a) one million dollars; or (b) an amount equivalent to whichever is the greater of— (i) three times the value of the goods not warehoused, or removed, as the case may be; or

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
Offence	Penalty
Offence under section 99(4) or 36(3).	<p style="margin-left: 40px;">22. An offence under section 99(4), or failure to comply with section 36(2).</p> <p style="margin-left: 40px;">A fine not exceeding whichever is the greater of—</p> <ul style="list-style-type: none"> (a) one million dollars; or (b) an amount equivalent to whichever is the greater of— <ul style="list-style-type: none"> (i) three times the value of the goods; or (ii) three times the duty and tax payable on the goods.

*Offences to Which Administrative Penalty
May Apply*

	Column 1	Column 2
	Offence	Penalty
Offence under section 100.	23. Failure to comply with a notice issued under section 100.	A fine not exceeding two hundred and fifty thousand dollars.
Offence under section 108(3).	24. Redirecting goods to a place other than a Government Warehouse, contrary to section 108(3).	A fine not exceeding one million dollars.
Offence under section 112(5).	25. Failure to notify Commissioner as to delivery of goods to ports, as required by section 112(5).	A fine not exceeding one million dollars.
Offence under section 112(8).	26. Redirection or removal of goods, contrary to section 112(8).	A fine not exceeding one million dollars.
Offence under section 113.	27. Failure to comply with any provision of section 113 (responsibility of occupier of designated premises to take reasonable steps to safeguard goods).	A fine not exceeding one million dollars or the value of the goods, whichever is greater.
Offence under section 131(1).	28. Failure to produce or account for goods as required under section 131(1).	A fine not exceeding one million dollars.
Offence under section 136(3).	29. Taking goods on board a foreign-going vessel or aircraft as stores, contrary to section 136(2).	A fine not exceeding one million dollars.
Offence under section 137.	30. Failure by operator to acknowledge receipt of stores, as required under section 137.	A fine not exceeding two hundred and fifty thousand dollars.
Offence under section 138(3).	31. Breaking a seal placed on stores or interfering with stores, contrary to section 138(3).	A fine not exceeding two million dollars.

*Offences to Which Administrative Penalty
May Apply*

	Column 1 — Offence —	Column 2 — Penalty —
Offence under section 139(3).	32. Removal of stores from a vessel or aircraft, contrary to section 139(1).	<p>A fine not exceeding whichever is the greater of—</p> <ul style="list-style-type: none"> (a) one million dollars; or (b) an amount equivalent to whichever is the greater of— <ul style="list-style-type: none"> (i) three times the value of the goods removed; or (ii) three times the duty and tax payable on the goods removed.
Offence under section 142(1).	33. Delivering goods to a place of export, contrary to section 142(1).	A fine not exceeding one million dollars.
Offence under section 145.	34. Failure to notify Commissioner, as to failure to export goods and reasons therefor, as required under section 145.	A fine not exceeding two hundred and fifty thousand dollars.

*Offences to Which Administrative Penalty
May Apply*

	Column 1	Column 2
	Offence	Penalty
Offence under section 157(1).	35. Failure of declarant to keep records or submit reports as required under section 157(1).	A fine not exceeding five million dollars.
Offence under section 158.	36. Undertaking processing, or appointing a third party to undertake processing, without the approval required under section 158.	A fine not exceeding one million dollars.
Offence under section 173.	37. Carriage of goods by coasting trade, contrary to section 173.	A fine not exceeding five million dollars.
Offence under section 177(1).	38. Failure to make a notification in respect of damaged, destroyed or unaccounted for goods, as required under section 177.	A fine not exceeding one million dollars.
Offence under section 220(3).	39. Contravention of section 220(2) (opening, breaking, destroying or tampering with marks, locks, seals, <i>etc.</i>).	A fine not exceeding two million dollars.
Offence under section 224(5).	40. Failure to comply with the request of an officer under section 224(3).	A fine not exceeding one million dollars.
Offence under section 227(1).	41. Providing to the Commissioner, in respect of any customs matter, information that is false in a material particular.	A fine not exceeding one million dollars.
Offence under section 228(1).	42. Failure to comply with a notice issued under section 228(1) to produce goods or documents.	A fine not exceeding two million dollars.
Offence under section 242(4).	43. Removing goods from place of detention, contrary to section 242(2).	A fine not exceeding whichever is the greater of— (a) three million dollars;

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
Offence	Penalty
<p>Offence under section 246(3).</p>	<p>(b) an amount equivalent to whichever is the greater of—</p> <ul style="list-style-type: none"> (i) three times the value of the goods removed; or (ii) three times the duty and tax payable on the goods removed. <p>A fine not exceeding five million dollars.</p>
<p>Offence under section 249(5).</p>	<p>44. Importing, exporting, or carrying coastwise, any goods in contravention of an order under section 246, or importing or exporting goods in contravention of any customs law.</p> <p>45. Attempting to clear prohibited goods or restricted goods for a customs procedure, in contravention of section 249.</p> <p>If the goods are—</p> <ul style="list-style-type: none"> (a) prohibited goods, a fine not exceeding five million dollars;

*Offences to Which Administrative Penalty
May Apply*

Column 1	Column 2
Offence	Penalty
<p>Offence under section 263(3).</p>	<p>46. Failure to—</p> <p style="padding-left: 40px;">(a) keep records of customs business as required under section 263(1); or</p> <p style="padding-left: 40px;">(b) make documents available, as required under section 263(2)(a).</p> <p style="text-align: right;">A fine not exceeding five million dollars.</p>
<p>Offence under section 263(4).</p>	<p>47. Failure to provide facilities or assistance in respect of documents, as required under section 263(2)(c).</p> <p style="text-align: right;">A fine not exceeding one million dollars.</p>
<p>Offence under section 264(2).</p>	<p>48. Failure to produce a document as required under section 264.</p> <p style="text-align: right;">A fine not exceeding one million dollars.</p>
<p>Offence under section 265(2).</p>	<p>49. Failure to make available, or submit, a document as required under section 265.</p> <p style="text-align: right;">A fine not exceeding one million dollars.</p>
<p>Offence under section 267(3).</p>	<p>50. Failure to allow access to a document as required under section 267.</p> <p style="text-align: right;">A fine not exceeding one million dollars.</p>

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to repeal and replace the Customs Act in order to modernize customs practices and procedures so as to effectively and efficiently facilitate trade. Such modernization is expected to bring benefits for the trading community and the Jamaica Customs Agency by improving customs clearance and revenue collection processes, simplifying procedures for businesses and providing a more efficient service delivery to the public.

This Bill seeks to give effect to that decision.

Provision is made in the Bill to enable the development of comprehensive regulations and rules, which will lend greater precision in, and predictability to, the conduct of customs business.

NIGEL CLARKE
Minister of Finance
and the Public Service.

ABILL

ENTITLED

AN ACT to Repeal and replace the Customs Act, and
to provide for connected matters.

As introduced by the Honourable Minister of Finance and the
Public Service.

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