

No. S 39

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

CUSTOMS ORDER, 2006

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation and long title.
2. Interpretation.

PART II

APPOINTMENT AND POWERS OF OFFICERS

3. Appointment of Controller etc. and other officers.
4. Officers of customs deemed public servants.
5. Powers of police officers.
6. Authority cards to be produced.
7. Persons employed on customs duty deemed proper officers of customs for such service.
8. Powers of investigation.

PART III

LEVYING OF CUSTOMS DUTIES

9. Power of Minister to fix customs duties by order.
10. Power of Controller to fix value of dutiable goods.

11. Classification and valuation by proper officer of customs.
12. Powers of Minister to exempt.
13. Power of Minister to remit customs duties.
14. Re-imposition of customs duty.
15. Return of duty or other charges overpaid or erroneously paid.
16. Payment of duty etc. short paid or erroneously refunded.
17. Recovery of customs duties from persons leaving Brunei Darussalam.
18. Duty on goods re-imported.
19. Remission of import duty on goods lost etc. before or after removal from customs control.
20. Calculation of import duty.
21. Calculation of export duty.
22. Time of importation when duty is imposed or abolished.
23. Questions in respect of goods deemed dutiable.

PART IV

IMPORTATION AND EXPORTATION

24. Time and place of landing goods by sea.
25. Places of landing of goods imported by air.
26. Time and place of import by land.
27. Time and place of loading goods for export by sea.
28. Time and place of export by land.
29. Exportation by air.
30. Exemption from sections 24 to 29.

31. Power of Minister to prohibit imports or exports.
32. Power of Controller to require security.

PART V

CLEARANCE

33. Arriving vessels, unless exempted, to produce last clearance.
34. No vessel, unless exempted, to sail without clearance.
35. Master of vessel not sailing within 48 hours after clearance to report to proper officer of customs.
36. Documents to be furnished on applying for clearance.
37. List of goods to be endorsed on or attached to clearance.
38. When clearance may be refused.
39. Vessels exempted from requiring clearance.
40. Application to aircraft.

PART VI

GENERAL PROVISIONS AFFECTING VESSELS IN TERRITORIAL WATERS

41. Vessels in territorial waters.
42. Hovering.
43. Goods unaccounted for deemed uncustomed.
44. Missing goods deemed illegally landed.
45. Proper officer of customs may board vessel.
46. Power to seal up and secure hatchways, goods etc. and use of ship's stores.
47. Prohibition of carriage of dutiable goods in local craft.
48. Bulk not to be broken etc.
49. Application to aircraft.

PART VII

MANIFESTS

50. Master, owner or agent of arriving vessel to furnish inward manifest.
51. Person in charge of local craft to make declaration on arrival.
52. Correction to be made on completion of discharge and liability of master.
53. Pilot, owner or agent of arriving aircraft to furnish inward manifest.
54. Outward manifest of vessel to be furnished.
55. Person in charge of local craft to make declaration before departure.
56. Pilot of departing aircraft to furnish outward manifest.
57. Local craft arriving at or leaving certain navigable rivers.
58. Saving in respect of exempted vessels and certain aircraft.

PART VIII

WAREHOUSING

59. Minister may establish customs warehouses.
60. Licensed warehouses.
61. All goods to be deposited in warehouse on arrival.
62. Warehouse deposit receipts.
63. Licensing of duty-free shops.
64. Licensing of inland clearance depot.
65. Power to open and examine packages.
66. Detention of goods where doubt exists.
67. Protection of officers of customs from liability.
68. Payment of warehouse rent.

- 69. Dangerous goods.
- 70. Government lien over goods deposited in customs warehouse.
- 71. Removal of dutiable goods from warehouse.
- 72. Landing of goods for transshipment.
- 73. Weighing and handling fees.

PART IX

DECLARATION OF GOODS

Part A

Dutiable Goods

- 74. Declaration of dutiable goods imported.
- 75. Declaration to give full and true account.
- 76. Declaration of dutiable goods to be exported.

Part B

Non-Dutiable Goods

- 77. Declaration of non-dutiable goods imported by sea or air.
- 78. Declaration of non-dutiable goods imported by land.
- 79. Declaration of non-dutiable goods exported by sea or air.
- 80. Declaration of non-dutiable goods exported by land.
- 81. Declaration to give full and true account.

Part C

General Provisions

- 82. Passengers' baggage etc. and postal goods exempted.
- 83. Saving provision.

84. Control of agents.
85. Person in charge of goods imported etc. by land deemed agents.

PART X

DRAWBACK

86. Conditions under which drawback may be paid.
87. Declaration by claimant.
88. Drawback on destroyed goods.
89. Refund to visitors and owners of samples.
90. Relief from duty on goods temporarily imported.
91. Export and re-import of trade samples free of duty.
92. Drawback on imported goods used in manufacture.

PART XI

MISCELLANEOUS

93. Documents to be produced on demand.
94. Keeping of business records.
95. Business records.
96. Audit or examination of business records.
97. Persons to give information or produce documents.
98. Service of notices.
99. Baggage of passengers.
100. Proper officer of customs may take samples.
101. Packing of dutiable goods.

102. Addition or deduction of new or altered import duties in case of contract.

103. Computer service.

PART XII

SEARCH, SEIZURE AND ARREST

104. Issue of search warrant.

105. Conditions for entry into buildings.

106. When search may be made without warrant.

107. Power to search vessels and aircraft.

108. Senior officer of customs to exercise powers of search.

109. Access to recorded information or computerised data.

110. Access to places or premises.

111. Officers of customs may stop and search conveyances.

112. Power to set up roadblocks.

113. Power to open packages and examine goods.

114. Search of persons arriving in Brunei Darussalam.

115. Seizure of goods subject of offence.

116. Retention of documents obtained during search.

117. Release of conveyance, vessel, aircraft or movable property under bond.

118. Powers of arrest.

PART XIII

PROVISIONS AS TO TRIAL AND PROCEEDINGS

119. Court of Magistrate to have full jurisdiction.

120. Burden of proof.

121. Presumptions of possession of dutiable, prohibited or uncustomed goods.
122. Proportional examination or testing of goods seized to be accepted by courts.
123. Evidence of analysis may be given in writing.
124. Proof as to registration or licensing of vessels in Brunei Darussalam.
125. Proof as to tonnage or build of craft.
126. Imprisonment in default etc.
127. Manner of seizure not to be enquired into on trial or on appeal.
128. Protection of informers from discovery.
129. Confidentiality of information.
130. Goods liable to seizure liable to forfeiture.
131. Court to order disposal of goods seized.
132. Goods seized in respect of which there is no prosecution forfeited if not claimed within one month.
133. Goods or amount forfeited may be delivered or refunded to owner or other person.
134. Seized documents subject to court order and proceedings.
135. Conviction under other law.
136. Compounding of offences.
137. No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause.

PART XIV

OFFENCES AND PENALTIES

138. Penalty on making incorrect declarations and on falsifying documents.
139. Penalty on refusing to answer questions or on giving false information or false document.

- 140. Penalty for various smuggling offences.
- 141. Evading duty by unauthorised modification of computer program or data.
- 142. Knowingly advancing or furnishing money for business comprising sale, purchase etc. of uncustomed goods.
- 143. Penalty for assaulting or obstructing officers of customs and rescuing goods.
- 144. Unlawful possession etc. of customs articles and unauthorised use of customs uniform.
- 145. Penalty for offering or receiving bribes and abuse of authority.
- 146. Penalty for offences not otherwise provided for.
- 147. Attempts and abetment.
- 148. Offences by bodies corporate etc.
- 149. Rewards.

PART XV

GENERAL

- 150. Documents to be in approved form.
- 151. Exemption.
- 151A. *Amendment of Schedule.*
- 152. Power to make regulations.
- 153. Appeal from decision of Controller.
- 154. Power of Controller to charge fees.
- 155. Transitional provisions.
- 156. Amendment of section 3 of Chapter 36.
- 157. Repeal of Chapter 36.

SCHEDULE

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

CUSTOMS ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Customs Order, 2006.

(2) The long title of this Order is "An Order relating to customs and for matters connected therewith or incidental thereto".

Interpretation.

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

"agent", in relation to a vessel, includes a chinchew and a comprador;

"aircraft" includes any kind of craft which may be used for the conveyance of passengers or goods by air;

"authentication code" means any identification or identifying code, password or any other authentication method or procedure which has been assigned to a registered user of the computer service referred to in section 103 for the purposes of identifying and authenticating the access to and use of the computer service by the registered user;

"Controller" means the Controller of Customs and Excise appointed under subsection (1) of section 3, and includes the Deputy Controller of Customs and Excise;

"country" includes a territory;

"customs airport" means any place which has been prescribed as a customs airport;

"customs duty" means any import duty, export duty, surtax, surcharge or cess imposed by or under this Order;

"customs port" means any port within the meaning of the Ports Act (Chapter 144) prescribed to be a customs port;

"customs transit operations" means the transport of goods from the office of departure to the office of destination under customs transit;

"customs warehouse" means a warehouse or other place established by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, under section 59 for the deposit of dutiable goods;

"database report" means any automatic log, journal or other report which is automatically generated by the computer service referred to in section 103 for the purposes of recording the details of a transaction relating to an electronic notice, including the authentication code, date and time of receipt, storage location and any alteration or deletion relating to the notice;

"denatured" means effectually rendered unfit for human consumption to the satisfaction of the Controller;

"dutiable goods" means all goods subject to the payment of customs duty and on which such duty has not yet been paid;

"duty-free shop" means any place licensed for the warehousing and sale of dutiable goods free of duty under section 63;

"electronic notice" has the meaning assigned to it in subsection (1) of section 103;

"export" means to take or cause to be taken out of Brunei Darussalam by land, sea or air or to place any goods in a vessel, conveyance or aircraft for the purpose of such goods being taken out of Brunei Darussalam by land, sea or air:

Provided that goods *bona fide* in transit, including goods which have been transhipped, shall not, for the purpose of levy of customs duties, be deemed to be exported unless they are or become uncustomed goods;

"exporter" includes any person by whom any goods, including goods transferred from an importing aircraft or ship, are exported from Brunei Darussalam or supplied for use as aircraft's or ship's stores, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods

exported or intended for exportation or supplied or intended for supply as aircraft's or ship's stores;

"free trade zone" means any area in Brunei Darussalam which has been declared to be a free trade zone under any written law in force in Brunei Darussalam;

"goods" includes animals, birds, fish, plants and all kinds of movable property;

"hover", in the case of a vessel in territorial waters, means to linger without apparent lawful purpose, whether such vessel be moving or not moving;

"import" means to bring or cause to be brought into Brunei Darussalam by land, sea or air:

Provided that goods *bona fide* in transit, including goods for transshipment, shall not, for the purpose of levy of customs duties, be deemed to be imported unless they are or become uncustomed goods;

"importer" means any person by or for whom goods are imported; and includes the consignee of goods and any person who is or becomes the owner of, or entitled to the possession of, or beneficially interested in any goods on or at any time after importation thereof and before such goods have ceased to be subject to customs control;

"inland clearance depot" means a common user inland facility equipped with fixed installations and offering services for handling and temporary storage of any kind of goods carried by land and placed under customs control under section 64;

"inland customs station" means a place prescribed for the collection of duties under paragraph (q) of subsection (2) of section 152 and, in relation to any prescribed route under paragraph (d) of subsection (2) of section 152, means a place so prescribed for such route;

"in transit" means taken or sent from any country and brought into Brunei Darussalam by land, sea or air, whether or not landed or transhipped in Brunei Darussalam, for the sole purpose of being carried to another country either by the same or another conveyance;

"legal landing place" means any place for the landing and shipping of goods within the limits of a port defined under the Ports Act (Chapter 144) and any other place which has been prescribed as a legal place for the landing and shipping of goods;

"licensed warehouse" means a warehouse or other place licensed for the warehousing of dutiable goods under section 60;

"liquor" includes all liquids containing more than 2 per centum of pure alcohol by weight but does not include denatured spirits;

"local craft" means any junk, tongkang, perahu, kumpit or other similar type of vessel, and any steam or motor vessel under 15 nett registered tons, and includes any type of motor vessel whether fitted with an inboard engine or an outboard motor;

"master" means any person, except a pilot or harbour master, having for the time being control or charge of a vessel;

"Minister" means the Minister of Finance;

"officer of customs" means —

(a) the Controller;

(b) any Deputy Controller, Assistant Controller, Senior Superintendent, Superintendent, Deputy Superintendent or Assistant Superintendent of Customs and Excise appointed under section 3; and

(c) the persons authorised by section 5 to exercise the powers of senior officers of customs or of officers of customs and any person appointed by His Majesty the Sultan and Yang Di-Pertuan to act as an officer of customs;

"owner" —

(a) in respect of a ship, includes any person acting as agent for the owner or who receives freight or other charges payable in respect of the ship;

(b) in respect of goods, includes any person, other than an officer of customs acting in his official capacity, being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods;

"petroleum" means any mineral oil or relative hydrocarbon in its solid, liquid or gaseous form existing in its natural condition and includes casing head petroleum spirit, bituminous shales, other stratified deposits from which oil can be extracted commercially and petroleum products obtained from the process of manufacture;

"pilot" means any person having or taking command or charge of an aircraft;

"Ports Department warehouse" means a warehouse of the Ports Department controlled and managed by the Director of Ports under the Ports Act (Chapter 144);

"preferential tariff" means the tariff of the different rates of duty imposed by order of the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, under subsection (2) of section 9;

"preventive vessel" means any vessel employed for the prevention of smuggling or for any other purpose relating to customs;

"prohibited goods" means goods the import or export of which is prohibited, either absolutely or conditionally, by an order under section 31 or by any other written law for the time being in force in Brunei Darussalam;

"proper officer of customs" means any officer of customs acting in the fulfilment of his duties under this Order, whether such duties are assigned to him specially or generally, or expressly or by implication;

"registered user" means a person who has been registered with and authorised by the Controller to gain access to and use the computer service referred to in section 103;

"repealed Act" means the Customs Act (Chapter 36) repealed by this Order;

"sea" includes inland waters;

"senior officer of customs" means —

(a) the Controller;

(b) any Deputy Controller, Assistant Controller, Senior Superintendent, Superintendent, Deputy Superintendent or Assistant Superintendent of Customs and Excise; and

(c) any other officer of customs authorised by this Order or under the hand of the Controller to act as a senior officer of customs;

"sufferance wharf" means any place other than an approved place of loading or unloading at which the senior officer of customs may, under such conditions and in such manner as he may direct, either

generally or in any particular case, allow any goods to be loaded or unloaded;

"uncustomed goods" means goods in respect of which a breach of this Order has been committed;

"value", in relation to imported goods, means the value of goods for the purpose of levying *ad valorem* customs duty and includes freight, insurance, and all other costs, charges and expenses, except any customs duty, incidental to the purchase and delivery of such goods at the place where payment of duty had been made;

"vessel" includes any ship or boat or any other description of vessel used in navigation;

"warehouse" means a place for the deposit of goods under customs control.

(2) For the purposes of this Order, goods shall be deemed to be under customs control whilst they are deposited or held in any free trade zone, or in any Ports Department warehouse, customs warehouse or licensed warehouse, post office, or in any vessel, conveyance, aircraft or place from which they may not be removed except with the permission of the proper officer of customs.

(3) References in this Order —

(a) to a document or record include, in addition to a document or record on paper, references to any, or part of any —

- (i) document or record kept on any magnetic, optical, chemical or other medium;
- (ii) photograph;
- (iii) map, plan, graph, picture or drawing;
- (iv) film, including a microfilm and a microfiche, negative, disc, tape, soundtrack or any other device in which one or more visual images, sounds or other data are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

(b) to a document or record in writing, or the making of a document or record in writing, include, unless the context otherwise requires, any electronic notice or the making, serving or submitting of such a notice under this Order; and

(c) to a person —

- (i) in respect of a body corporate or unincorporated body, include references to the director, manager, secretary or other similar officer of that body corporate or unincorporated body, or of a person purporting to act in any such capacity;
- (ii) in respect of partnership, include references to the partner, secretary or other similar officer of that partnership, or of a person purporting to act in any such capacity;

(d) to this Order include references to regulations made under this Order.

PART II

APPOINTMENT AND POWERS OF OFFICERS

Appointment of Controller etc. and other officers.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Controller of Customs and Excise and such number of Deputy Controllers and Assistant Controllers of Customs and Excise and appoint such number of officers of customs under such official designations as His Majesty the Sultan and Yang Di-Pertuan may think expedient for the purpose of carrying out all or any of the functions conferred on the Controller by this Order.

(2) His Majesty the Sultan and Yang Di-Pertuan may appoint such number of Senior Superintendents, Superintendents, Deputy Superintendents and Assistant Superintendents of Customs and Excise as His Majesty the Sultan and Yang Di-Pertuan may think fit for the purpose of carrying out this Order.

(3) Subject to subsection (1), the officers performing the functions of the Controller, Deputy Controllers and Assistant Controllers of Customs under section 3 of the repealed Act immediately before the commencement of this Order shall be deemed to be appointed as the Controller, Deputy Controllers and Assistant Controllers of Customs and Excise respectively under this section and shall have, enjoy and perform all powers, privileges and duties respectively conferred, granted and imposed upon the holders of their respective offices under this Order and any other written law.

(4) Subject to subsection (2), the officers performing the functions of the Senior Superintendents, Superintendents, Deputy Superintendents and Assistant Superintendents of Customs under section 3 of the repealed Act immediately before the commencement of this Order and all other officers of customs immediately before that date shall be deemed to be appointed under this section

and shall have, enjoy and perform all powers, privileges and duties respectively conferred, granted and imposed upon the holders of their respective offices under this Order and any other written law.

(5) The Controller shall be the chief officer of customs and shall have the superintendence of all matters relating to customs, subject to the direction and control of the Minister.

(6) Deputy Controllers, Assistant Controllers, Senior Superintendents, Superintendents, Deputy Superintendents and Assistant Superintendents of Customs and Excise shall be subject to the general direction and supervision of the Controller and, subject thereto, shall have and exercise all or any of the powers conferred on the Controller by or under this Order, other than those conferred by subsection (5) of section 11 and by section 23.

(7) All appointments made under this Part shall be published in the *Gazette*.

Officers of customs deemed public servants.

4. For the purposes of this Order, all officers of customs shall be deemed to be public servants within the meaning of the Penal Code (Chapter 22).

Powers of police officers.

5. For the purposes of this Order, subject to the general direction and supervision of the Controller, all police officers not below the rank of Inspector shall have and may exercise all or any of the powers conferred by this Order on senior officers of customs, and all police officers below the rank of Inspector shall have and may exercise all or any of the powers conferred by this Order on officers of customs.

Authority cards to be produced.

6. (1) Every officer of customs, other than a senior officer of customs, when acting against any person under this Order shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting such authority card as the Controller or, in the case of a police officer, the Commissioner of Police, may direct to be carried by such officer.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of customs acting or purporting to act under this Order if such officer, being an officer other than a senior officer of customs, is not in uniform and refuses to declare his office and produce his authority card, on demand being made by such person.

Persons employed on customs duty deemed proper officers of customs for such service.

7. (1) Every person employed on any duty or service relating to customs by the orders or with the concurrence of the Controller, whether previously or subsequently expressed, shall be deemed to be the proper officer of customs for such duty or service.

(2) Every act required by law at any time to be done by or with any particular officer nominated for such purpose, if done by or with any person appointed by the Controller to act for such particular officer, shall be deemed to be done by or with such particular officer.

Powers of investigation.

8. In any case relating to the commission of an offence under this Order, a proper officer of customs shall have all the powers of a police officer under the Criminal Procedure Code (Chapter 7) in relation to an investigation into a seizable offence.

PART III

LEVYING OF CUSTOMS DUTIES

Power of Minister to fix customs duties by order.

9. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, fix the customs duties to be levied on any goods imported into or exported from Brunei Darussalam and to be paid by the importer or exporter, as the case may be.

(2) Any such order may impose different rates of import duty upon goods which are shown to the satisfaction of the Controller to have been consigned from one of the prescribed countries and either —

(a) to be the produce of one of the prescribed countries; or

(b) to have been manufactured in one of the prescribed countries.

(3) Notwithstanding subsection (2), no goods shall be admitted under the preferential tariff unless the importer shall comply with any regulations made under this Order in that behalf.

(4) Without prejudice to any other remedy, any customs duty payable under this Order may be recovered as a civil debt due to the Government.

(5) In this section, "prescribed country" means a country which has been specified as a prescribed country by an order made under this section.

Power of Controller to fix value of dutiable goods.

10. The Controller may, by notification published in the *Gazette*, for the purpose of the levy and payment of customs duties, fix the value of any dutiable goods.

Classification and valuation by proper officer of customs.

11. (1) A proper officer of customs may, in respect of any dutiable or uncustomed goods —

(a) determine the class of goods to which such dutiable or uncustomed goods belong; and

(b) value, weigh, measure or otherwise examine, or cause to be valued, weighed, measured or otherwise examined such dutiable or uncustomed goods,

for the purpose of ascertaining the customs duty leviable thereon.

(2) All necessary operations relating to the valuation, weighing, measuring or examination of dutiable or uncustomed goods shall be performed by or at the expense of the owner thereof or his agent:

Provided that the proper officer of customs may at his discretion direct that any such operations shall be performed by persons under his control, and in any case such operations shall be performed at the expense of the owner or his agent.

(3) When a valuation of any goods has been made by a proper officer of customs, such valuation shall be presumed to be correct until the contrary is proved.

(4) Any person who is dissatisfied with a decision of the proper officer of customs under subsection (1) as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection (1) of section 9 or with the valuation, weighing, measuring or examining of any goods may pay the customs duty levied under protest.

(5) Where customs duty has been paid under protest, the proper officer of customs shall, within 30 days of such payment being made, refer any question as to classification or valuation of goods to the Controller for his decision.

Powers of Minister to exempt.

12. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order, exempt, subject to such condition as he may think fit to impose, any class or description of goods or persons from the payment of the whole or any part of any customs duty which may be payable.

(2) The Minister may in any particular case —

(a) exempt any person from the payment of the whole or any part of the customs duties or any other prescribed fees or charges which may be payable by such person on any goods; or

(b) direct the refund to any person of the whole or any part of the customs duties or any other prescribed fees or charges which have been paid by such person on any goods,

and in granting such exemption or directing such refund, the Minister may impose such conditions as he may think fit.

(3) Any goods in respect of which an exemption from the payment of customs duties has been granted under subsection (1) or (2) shall be deemed to be dutiable goods until the conditions, if any, subject to which the exemption from customs duty was granted are fulfilled and shall be liable to all other charges, not being customs duties, to which they would be subject if no such exemption had been granted.

Power of Minister to remit customs duties.

13. The Minister may, if he thinks just and equitable to do so, and subject to such conditions as he may think fit to impose, remit the whole or any part of the customs duties or any other prescribed fees or charges payable under this Order.

Re-imposition of customs duty.

14. (1) If any goods, on which customs duty has not been paid by reason of an exemption granted under section 12 or under any other written law, cease to comply with the conditions subject to which such exemption was granted or cease to be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall, upon such cesser, become liable to the customs duty, and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty:

Provided that if the Controller is satisfied that at the time when any such goods become liable to customs duty under this subsection the value thereof is

less than the value at the time when exemption was granted, he shall fix the value thereof as at the time when such goods become so liable to customs duty and duty shall be paid accordingly.

(2) If any goods, which are liable to customs duty under subsection (1) and on which such duty has not been paid, are found in the possession or on the premises of any person other than the person authorised to possess them under the terms of such exemption, such goods shall, until the contrary is proved, be deemed to be uncustomed goods within the meaning of this Order.

Return of duty or other charges overpaid or erroneously paid.

15. It shall be lawful for the Controller, if it is proved to his satisfaction that any money has been overpaid or erroneously paid as customs duties, taxes, fees, warehouse rent or other charges, or that any money was erroneously collected for the composition of offences under this Order, to order the refund of the money so overpaid or erroneously paid:

Provided that —

(a) no such refund shall be allowed unless a claim in respect of it is made in such form and manner as the Controller may determine, either generally or in a particular case, within one year after the overpayment or erroneous payment was made; or

(b) in the case where any customs duty has been paid under protest under subsection (4) of section 11, no claim of refund shall be allowed unless such claim is made in such form and manner as the Controller may determine, either generally or in a particular case, within one year after the decision on classification or valuation is made known to the claimant.

Payment of duty etc. short paid or erroneously refunded.

16. Whenever —

(a) through inadvertence, error, collusion, misconstruction on the part of any officer of customs, or through misstatement as to value, quantity or description by any person, or for any other reason, the whole or any part of any customs duties or other moneys payable under this Order have not been paid; or

(b) the whole or any part of such customs duties or other moneys, after having been paid, have been, owing to any cause, erroneously refunded,

the person liable to pay such customs duties or other moneys or the person to whom such refund has erroneously been made, as the case may be, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within one year from the date on which customs duty was payable or deficient customs duty was paid or the refund was made, as the case may be, and without prejudice to any other remedy for the recovery of the amount due, any dutiable goods belonging to such person which may be in any customs warehouse or licensed warehouse may be detained until such customs duty or deficiency be paid or the refund be paid, as the case may be.

Recovery of customs duties from persons leaving Brunei Darussalam.

17. (1) Where the Controller has reason to believe that any person is about or is likely to leave Brunei Darussalam without paying any customs duties, he may issue to the Controller of Immigration a certificate containing particulars of the duties so payable with a request that such person be prevented from leaving Brunei Darussalam unless and until he pays all the duties so payable or furnishes security to the satisfaction of the Controller for its payment.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, the Controller of Immigration who receives a request under subsection (1) in respect of a person shall exercise all measures which may include the removal or retention of any certificate of identity, passport, exit permit or other travel documents in relation to such person as may be necessary to give effect to the request.

(3) The Controller shall cause a notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates:

Provided that the non-receipt of the notice by such person shall not invalidate anything done under this section.

(4) Where the person in respect of whom a certificate has been issued under subsection (1) produces on or after the date of the certificate a written statement signed by the Controller stating that all the duties specified in the certificate have been paid or that security has been furnished for its payment, the statement shall be sufficient authority for allowing such person to leave Brunei Darussalam.

Duty on goods re-imported.

18. Where any goods, whether made or produced within Brunei Darussalam or not, being of a class or description liable to any import duty are re-imported into Brunei Darussalam after exportation therefrom, and it is shown to the satisfaction of the senior officer of customs that any duty chargeable in respect of the goods

prior to their exportation was duly paid, either prior to exportation or at any subsequent time, and either that no drawback of any such duty was allowed on exportation, or that any drawback so allowed has been repaid, and —

(a) if it is further shown that the goods have not been subjected to any process abroad, the goods shall be exempt from any such duty when the same are re-imported into Brunei Darussalam, unless the rate of duty chargeable on goods of the same class or description at the time when the same are imported into Brunei Darussalam shall exceed the rate paid on the goods as import duty on first importation, in which case such goods shall be chargeable with duty at a rate equal to the difference between the rate at which the duty previously paid was calculated and the rate in force at the date when such goods are re-imported into Brunei Darussalam;

(b) if the goods at the time when the same are re-imported into Brunei Darussalam are of a class or description liable to an import duty *ad valorem* and it is further shown that the goods have been subjected to a process of repair, renovation or improvement abroad, but that their form or character has not been changed, such goods shall be chargeable with duty as if the amount of the increase in the value of the goods attributable to the process were the whole value thereof and where any sum has been contracted to be paid for the execution of the process, the sum shall be *prima facie* evidence of that amount, but without prejudice to the powers of the proper officer of customs as to the ascertainment of the value of the goods for the purpose of assessing duty thereon *ad valorem*:

Provided that if the rate of duty chargeable on goods of the same class or description at the time when the same are re-imported into Brunei Darussalam shall exceed the rate paid on the goods on first importation, then in such case, in addition to the *ad valorem* import duty chargeable under this section according to the amount of the increase in the value of the goods attributable to the process, such goods shall be chargeable with additional duty calculated in the manner set out in paragraph (a), as if such goods had not been subjected to any process or repair, renovation or improvement abroad.

Remission of import duty on goods lost etc. before or after removal from customs control.

19. (1) If any dutiable goods which have been imported are, by unavoidable accident, lost, damaged or destroyed at any time after their arrival within Brunei Darussalam, and before removal from customs control, the Controller may remit the whole or any part of the customs duty payable thereon.

(2) After removal of any goods from customs control, no abatement of customs duties shall be allowed on any such goods on account of loss or damage, or on account of any claim —

(a) to pay customs duty at a preferential rate; or

(b) that the weight, measure, volume or value as determined by the proper officer of customs for the purpose of ascertaining the customs duty on such goods, or any other factor affecting the goods, is incorrect,

unless notice in writing of the claim has been given at or before the time of the removal.

(3) After removal of any goods from customs control, no abatement of export duty shall be allowed on any such goods on account of damage, theft or loss.

Calculation of import duty.

20. (1) The rate of import duty applicable to any goods shall be —

(a) in the case of goods lawfully imported —

- (i) if such goods, other than petroleum in a licensed warehouse, are warehoused, the rate in force on the day on which the removal of the goods is authorised by the proper officer of customs;
- (ii) if such goods consist of petroleum which is in a licensed warehouse, the rate in force on the day on which such petroleum is removed from such warehouse;
- (iii) if such goods are imported by post, the rate in force on the day on which duty is assessed by the proper officer of customs; and
- (iv) in any other case, the rate in force on the day on which such goods are released by the proper officer of customs;

(b) in the case of uncustomed goods, the rate in force on the day on which such goods became uncustomed goods, if known, or the rate in force on the day of seizure, whichever is the higher.

(2) For the purpose of calculating the customs duty payable, the valuation applicable to any goods shall be made in the prescribed manner.

Calculation of export duty.

21. The rate of export duty and the valuation, if any, applicable to any goods shall be —

(a) in the case of goods lawfully exported, the rate and valuation in force on the day on which a receipt is issued for the payment of duty:

Provided that when payment of duty in arrears has been permitted under section 76, the rate and valuation shall be the rate and valuation in force on the day on which the goods are released by the proper officer of customs or, as the case may be, by an officer appointed under any law for the time being in force in Brunei Darussalam relating to the collection of export duties on goods exported from Brunei Darussalam;

(b) in the case of uncustomed goods, the rate and valuation in force on the day on which such goods became uncustomed goods, if known, or the rate and valuation in force on the day of seizure, whichever is the higher.

Time of importation when duty is imposed or abolished.

22. Whenever by virtue of an order made under subsection (1) of section 9 customs duty is fixed on any goods which previously were not dutiable goods or any customs duty on goods is abolished or when the importation or exportation of any goods is prohibited or any such prohibition abolished by an order made under section 31 and it becomes necessary for the purposes of this Order to determine the time at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such importation or exportation shall, notwithstanding anything contained in this Order, be deemed to be —

(a) in the case of importation by sea, the time at which the vessel importing such goods had actually come within the limits of the customs port to which such goods are consigned;

(b) in the case of importation by land, the time at which such goods come within Brunei Darussalam;

(c) in the case of importation by air, the time at which the aircraft lands at a customs airport;

(d) in the case of exportation by sea, the time at which shipment of such goods on board the vessel by which they were exported commenced;

(e) in the case of exportation by land, the time at which such goods leave Brunei Darussalam;

(f) in the case of exportation by air, the time at which the aircraft leaves a customs airport;

(g) in the case of importation from a free trade zone, the time at which the goods enter the customs territory;

(h) in the case of goods removed from the customs territory into a free trade zone for export, the time at which the goods are brought into the free trade zone.

Questions in respect of goods deemed dutiable.

23. (1) If any question arises as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection (1) of section 9, such question shall be decided by the Controller.

(2) Any certificate purporting to be signed by the Controller stating his decision under subsection (1) shall be admitted in evidence for the purpose of any proceedings under this Order.

PART IV

IMPORTATION AND EXPORTATION

Time and place of landing goods by sea.

24. (1) No goods imported by sea shall be landed —

(a) except at a legal landing place or sufferance wharf;

(b) until permission to do so has been received from the proper officer of customs; and

(c) except on such days and during such times as may be prescribed, unless permission to land goods on other days and during other times has been granted by the proper officer of customs.

(2) Except with the permission of the proper officer of customs, no such goods —

(a) after having been landed or unshipped shall be transhipped; or

(b) after having been put into any boat or craft to be landed shall be removed into any other boat or craft previously to their being landed.

Places of landing of goods imported by air.

25. No goods imported by air shall be landed except at a customs airport.

Time and place of import by land.

26. No goods shall be imported by land except —

(a) at a prescribed place of import and, where a route has been prescribed, by such route; and

(b) on such days and during such times as may be prescribed for such importation, unless permission to import goods on other days and during other times has been granted by the proper officer of customs.

Time and place of loading goods for export by sea.

27. No goods shall be loaded, or water-borne to be loaded, for exportation by sea except —

(a) at a legal landing place or sufferance wharf; and

(b) on such days and during such times as may be prescribed, unless permission to load goods on other days and during other times has been granted by the proper officer of customs.

Time and place of export by land.

28. No goods shall be exported by land except —

(a) at a prescribed place of export and, where a route has been prescribed, by such route; and

(b) on such days and during such times as may be prescribed, unless permission to export goods on other days and during other times has been granted by the proper officer of customs.

Exportation by air.

29. No goods shall be exported by air except from a customs airport.

Exemption from sections 24 to 29.

30. The Controller may exempt any person from all or any of the provisions of sections 24, 25, 26, 27, 28 and 29 on such conditions as he may think fit to impose.

Power of Minister to prohibit imports or exports.

31. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order, provide for —

(a) prohibiting the importation into, or the exportation from, Brunei Darussalam, either absolutely or conditionally, or from or to any specified country or place outside Brunei Darussalam, or the removal from one place to another place in Brunei Darussalam of any goods or class of goods; and

(b) prohibiting the importation into, or the exportation from, Brunei Darussalam, or removal from one place to another place in Brunei Darussalam of any goods or class of goods, except at specified ports or places.

(2) If any question arises as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection (1), such question shall be decided by the Controller.

Power of Controller to require security.

32. The Controller may, either generally or in a particular case or in respect of a particular area, require security to be given by any person moving dutiable goods within Brunei Darussalam and where any such security has been required to be given, no person shall move such goods unless such security has been given. Such security shall not exceed the amount of duty leviable on such goods.

PART V

CLEARANCE

Arriving vessels, unless exempted, to produce last clearance.

33. The master or the agent of every vessel arriving at any customs port and not being a vessel to which the exemption under section 39 applies shall produce to the proper officer of customs on arrival the clearance, or other document which it is usual to grant, granted at the last port of call whether such place be situated within or outside Brunei Darussalam, and the proper officer of customs may retain the same, and the master or the agent of any vessel who fails to comply with this section shall be guilty of an offence.

No vessel, unless exempted, to sail without clearance.

34. (1) No vessel whether laden or in ballast, not being a vessel to which the exemption under section 39 applies, shall depart from Brunei Darussalam until a clearance has been granted by a proper officer of customs.

(2) Such officer shall not issue a clearance for any vessel until the master of such vessel has declared to the officer the name of the country to which he claims that the vessel belongs and the officer shall thereupon inscribe the name on the clearance.

(3) If any such vessel shall leave or attempt to leave without a clearance, the master of the vessel and also the owner and any person who sends or attempts to send the vessel to sea, if the owner or person is party or privy to the offence, shall be guilty of an offence, and the vessel, if it has not left the territorial waters of Brunei Darussalam, may be detained.

(4) Clearances shall be in such form and manner as the Controller may determine, either generally or in a particular case.

Master of vessel not sailing within 48 hours after clearance to report to proper officer of customs.

35. (1) If the master of any vessel obtains a clearance and does not sail within 48 hours thereafter, he shall report to the proper officer of customs his reasons for not sailing, and if so required obtain a fresh clearance.

(2) If the master of any vessel fails to comply with this section, he shall be guilty of an offence, and the vessel may be detained.

Documents to be furnished on applying for clearance.

36. The master or agent of any vessel shall, at the time of applying for clearance —

(a) unless exempted by the senior officer of customs, deliver to the proper officer of customs a list of all goods, dutiable on export, for delivery at another port in Brunei Darussalam; and

(b) answer to the proper officer of customs such questions concerning the departure and destination of the vessel as are demanded of him.

List of goods to be endorsed on or attached to clearance.

37. The proper officer of customs shall endorse upon the clearance granted the list of goods delivered under section 36, or at his discretion shall attach the list submitted to the clearance.

When clearance may be refused.

38. The proper officer of customs may refuse to grant clearance to any vessel until —

(a) section 36 has been complied with;

(b) section 55 concerning local craft has been complied with; and

(c) all charges and penalties due by such vessel or by the owner or master thereof and all duties payable in respect of any goods shipped therein have been duly paid, or their payment secured by such guarantee or by deposit at such rate as the proper officer of customs directs; or the agent, if any, of the vessel shall have delivered to the proper officer of customs a declaration in writing to the effect that he shall be liable for all such charges and penalties, and shall have furnished security for the discharge of the same if so required.

Vessels exempted from requiring clearance.

39. (1) This Part shall not apply to vessels of the following classes —

(a) vessels other than vessels propelled by mechanical power engaged solely in fishing and licensed for the purpose of fishing under any written law for the time being in force in Brunei Darussalam;

(b) vessels whose movements are confined to navigable rivers upstream of a customs station situated at or near the mouth of such river;

(c) privately-owned pleasure vessels not plying for hire and not carrying cargo;

(d) vessels of a class in respect of which an order under subsection (2) is in force.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order, exempt, either absolutely or conditionally, any class of vessels from the operation of this Part.

Application to aircraft.

40. This Part shall apply, with such modifications and adaptations as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

PART VI

GENERAL PROVISIONS AFFECTING VESSELS IN TERRITORIAL WATERS

Vessels in territorial waters.

41. (1) The master of any vessel in territorial waters shall obey any signal made to him from a preventive or police vessel or any instruction given by an officer of customs or police officer in uniform from any other vessel or any place requiring him to stop or to heave to or to perform any other act.

(2) The master of any vessel found without lawful excuse in territorial waters or without a clearance for a customs port in Brunei Darussalam, or carrying cargo or passengers or both without a proper manifest of such, or found to have passed the customs port named in the papers of such vessel without having made entry and declared at such port, shall be guilty of an offence and liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding one year or both.

(3) Any vessel found in the circumstances described in subsection (2) shall be liable to seizure by any officer of customs or police officer and shall be escorted to a convenient port in Brunei Darussalam and may there be detained by such officer of customs or police officer for a period not exceeding 14 days.

(4) Upon an application by the Attorney General or any senior officer of customs or police officer in any proceedings commenced against the master of such vessel, or if no such proceedings are commenced, upon notice of such application being served on the master, owner or agent or affixed in some prominent place on such vessel, subsections (1) and (2) of section 357 of the Criminal Procedure Code (Chapter 7) shall apply to such vessel and to its cargo and to everything on such vessel as if it were produced before the court as having been used in the commission of an offence and any court of competent jurisdiction may make any order for custody, sale, destruction or confiscation authorised under such subsections.

(5) An appeal shall lie from any order of a court under subsection (4) at the instance of the master, owner or agent of such vessel as if from a conviction by such court.

(6) Nothing contained in subsections (2) and (3) shall apply to —

(a) any vessel the master of which satisfies the court that its entry into the waters of Brunei Darussalam was due to circumstances beyond his control and that its entry and the reason therefore was at the first possible opportunity reported to the nearest customs office or police station and that after such entry no person on board or connected with the vessel has done any act contrary to any written law; or

(b) any local craft if the person in charge thereof can show to the satisfaction of a senior officer of customs or the court that he has come from a place of departure from which it is unusual to grant or carry clearances or manifests.

Hovering.

42. (1) If any vessel hovers within territorial waters and on examination is found to be conveying goods dutiable on import or goods of a class the importation of which is prohibited, the master and every member of the crew of such vessel shall be presumed, until the contrary is proved, to have imported uncustomed or prohibited goods, as the case may be.

(2) If any vessel hovers within territorial waters and on examination is found not to be carrying any of the goods referred to in subsection (1), such vessel shall be presumed, until the contrary is proved, to be hovering for the purpose of receiving dutiable goods upon which export duty has not been paid or prohibited goods exported contrary to a prohibition and the master and every member of the crew of such vessel shall be guilty of an offence.

Goods unaccounted for deemed uncustomed.

43. If goods, other than *bona fide* ship's stores, are found by a proper officer of customs in any vessel in territorial waters and such goods are not correctly accounted for in the manifest or other documents which ought to be aboard such vessel, such goods shall be deemed to be uncustomed goods and shall be liable to seizure.

Missing goods deemed illegally landed.

44. If in any vessel in territorial waters the quantity of any goods entered in the manifest or other documents which ought to be aboard such vessel is found by a proper officer of customs to be short, and the deficiency is not accounted for to the satisfaction of such officer, such goods shall be deemed to have been illegally landed in Brunei Darussalam.

Proper officer of customs may board vessel.

45. When, in exercise of the powers conferred by this Order, a proper officer of customs boards any vessel, the master of such vessel shall provide such officer with suitable shelter and accommodation on the vessel while such vessel remains in territorial waters.

Power to seal up and secure hatchways, goods etc. and use of ship's stores.

46. (1) When, in exercise of the powers conferred by this Order, a proper officer of customs boards any vessel, he shall have free access to every part of the vessel, and shall have the power to fasten down hatchways or entrances to hold, to mark any goods before landing, and to lock up, seal, mark or otherwise secure any goods, including ship's stores, on board such vessel; and no hatchway or entrance, after having been fastened down by such officer, shall be opened, and no lock, seal or mark shall be opened, broken or altered without the consent of the proper officer of customs while the vessel is within the limits of the customs port or before any goods are delivered to be landed.

(2) The Controller may permit or refuse to permit the taking of anything without payment of customs duty into a ship as ship's stores and, in granting permission for the embarkation of anything under this subsection, impose such conditions as he may think fit.

(3) The Controller may permit or refuse to permit the use, within the territorial waters, of any ship's stores on which customs duty has not been paid.

Prohibition of carriage of dutiable goods in local craft.

47. (1) No dutiable or prohibited goods shall be carried in any local craft except with the permission of the Controller and subject to such conditions as the Controller may impose.

(2) Such permission may be granted either generally, by notification published in the *Gazette*, in respect of all local craft or any class or classes of local craft, or specially, in writing under the hand of the Controller or an officer authorised by him in that behalf, in respect of any particular local craft.

(3) This section shall not apply to any local craft lawfully engaged in transporting cargo from or to a vessel to or from a legal landing place.

Bulk not to be broken etc.

48. After the arrival of any vessel within territorial waters —

(a) bulk shall not be broken;

(b) no alteration shall be made in the stowage of the cargo so as to facilitate the unloading of any part of the cargo, before the permission to land goods required by paragraph (b) of subsection (1) of section 24 has been received by the master of such vessel; and

(c) no package shall at any time be opened on board such vessel,

without proper cause shown to a senior officer of customs.

Application to aircraft.

49. This Part shall apply, with such modifications and adaptations as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

PART VII

MANIFESTS

Master, owner or agent of arriving vessel to furnish inward manifest.

50. (1) Save as provided in subsection (3), the master, owner or agent of every vessel, other than a local craft, arriving in any customs port shall, before arrival or within 24 hours after the arrival and before any cargo is unshipped, furnish to the proper officer of customs a full and correct inward manifest of the vessel, certified by the master, owner or agent, containing all particulars as to marks, numbers and contents of each package intended to be landed at the customs port, together with the names of shippers and consignees of the same, and the proper officer of customs may demand, in addition, a complete manifest of the whole cargo of the vessel and a complete list of stores on board such vessel.

(2) A separate transshipment manifest shall be furnished in respect of goods to be transhipped at the customs port.

(3) Where it is shown to the satisfaction of the proper officer of customs that it is not practicable to furnish an inward manifest or a transshipment manifest within a reasonable time after the arrival of a vessel, the proper officer of customs may permit cargo to be landed or transhipped prior to the manifest being furnished, but no cargo so landed shall, except with the permission of the proper officer of customs, be delivered to the importer or consignee or his agent until such time as the manifest has been furnished to, and scrutinised by, the proper officer of customs.

(4) Such inward manifest or transshipment manifest referred to in this section shall be made in such form and manner as the Controller may determine, either generally or in a particular case, and shall contain such particulars as the Controller may think fit.

Person in charge of local craft to make declaration on arrival.

51. The master of every local craft, whether carrying cargo or not, arriving in any customs port shall attend in person at the customs office and make a written or oral declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of all the cargo to be landed from his vessel.

Correction to be made on completion of discharge and liability of master.

52. (1) On completion of the discharge of cargo or within such further period as the proper officer of customs may allow, the master, owner or agent of the vessel shall furnish to the proper officer of customs a certified amendment to the manifest required by section 50 due to short shipment, short landing, over landing or any other cause.

(2) The Controller may refuse to accept any amendment made after the Controller has been notified that an investigation into any offence under any written law has commenced in connection with goods to which the manifest relates.

(3) If any goods are not accounted for to the satisfaction of the proper officer of customs within 2 months of such amendment being furnished or within such further period as such officer may allow, the master, owner or agent of the vessel shall be liable to pay to such officer on demand a sum not exceeding \$1,000, and in addition, in the case of dutiable goods, the agent shall be liable to pay to such officer on demand the amount of duty leviable thereon or, when the correct duty cannot be assessed, an amount not exceeding \$1,000.

(4) If the person liable to the penalties laid down in subsection (3) refuses or fails to pay the penalties demanded of him, the Government may sue for and recover such penalties in a court of competent jurisdiction.

Pilot, owner or agent of arriving aircraft to furnish inward manifest.

53. The pilot, owner or agent of every aircraft arriving at a customs airport shall, before any cargo is delivered, furnish to the proper officer of customs a full and correct inward manifest of the aircraft, in such form and manner as the Controller may determine, either generally or in a particular case, certified by such pilot, owner or agent, containing all particulars as to marks, numbers and

contents of each package consigned to such customs airport, together with the names of consignors and consignees, and the proper officer of customs may demand, in addition, a complete manifest of the whole cargo of the aircraft and a complete list of stores on the aircraft.

Outward manifest of vessel to be furnished.

54. The master, owner or agent of any vessel, other than a local craft, leaving any customs port shall, within 48 hours of the departure of such vessel, furnish to the proper officer of customs a full and correct outward manifest of the vessel, in such form and manner as the Controller may determine, either generally or in a particular case, certified by such master, owner or agent, containing all particulars as to marks, numbers and contents of each package shipped at the customs port and the names of the shippers and consignees of the same.

Person in charge of local craft to make declaration before departure.

55. The master or owner of any local craft, whether carrying cargo or not, leaving any customs port shall, before the departure of such vessel, attend in person at the customs office and make a written or oral declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of all cargo shipped on board his vessel and the port or ports of destination of such cargo, and if no cargo is being carried he shall make a declaration accordingly:

Provided that in the case of a local craft which in the circumstances mentioned in section 57 is deemed to leave such customs port, no declaration shall be required if the proper officer of customs is satisfied that a declaration has already been made at a customs port further upstream.

Pilot of departing aircraft to furnish outward manifest.

56. The pilot, owner or agent of any aircraft leaving any customs airport shall, before the departure of such aircraft, furnish to the proper officer of customs a full and correct outward manifest of the aircraft, in such form and manner as the Controller may determine, either generally or in a particular case, certified by such pilot, owner or agent, containing all particulars as to marks, numbers and contents of each package loaded at such customs airport and the names of the consignors and consignees of the same.

Local craft arriving at or leaving certain navigable rivers.

57. Every local craft proceeding up or down a navigable river, at or near the mouth of which there is a customs port, shall stop at such port and shall, for the

purposes of this Part, be deemed to arrive at or leave, as the case may be, such customs port.

Saving in respect of exempted vessels and certain aircraft.

58. This Part shall not apply to any vessel to which the exemption referred to in section 39 applies or to any aircraft not engaged in carrying goods.

PART VIII

WAREHOUSING

Minister may establish customs warehouses.

59. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, establish and maintain customs warehouses, wherein dutiable goods may be deposited and kept without payment of duty, at any customs port, customs airport, place of import or export or at any inland customs station and may prescribe the amount to be paid as warehouse rent on goods deposited in such warehouses and remit any amount payable as rent.

Licensed warehouses.

60. (1) The Controller may, on payment of the prescribed fee, grant a licence to any person, in this section referred to as the licensee, for warehousing goods liable to customs duties in a place or places specified in such licence.

(2) Any such licence shall be for such period and subject to such conditions as the Controller in each case may specify in the licence and may at any time be withdrawn by the Controller.

(3) A senior officer of customs, or any officer of customs authorised by him for the purpose, shall at all times have access to any licensed warehouse.

(4) If it appears at any time that in any licensed warehouse there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such warehouse shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Order, be liable to pay to the proper officer of customs the duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Controller that such deficiency has been caused by any leakage, breakage or other unavoidable

accident, the Controller may remit the whole or any part of the customs duty leviable on the goods found deficient.

All goods to be deposited in warehouse on arrival.

61. (1) Subject to section 69, all goods imported into Brunei Darussalam shall, on first arrival or landing, be deposited by the importer or his agent in a Ports Department warehouse, customs warehouse or licensed warehouse or in any other warehouse approved by the Controller:

Provided that, subject to such conditions as the Controller may impose —

(a) the Controller may, if satisfied that on account of the weight, quantity or bulk of any such goods or for any other reason it is not practicable to deposit such goods in a warehouse, exempt such goods from being so deposited and such goods whilst kept in any other place shall be deemed to be under customs control;

(b) such goods on first landing at a customs airport where there is no warehouse may be dealt with as the Controller may direct; and

(c) where the bill of lading, airway bill, invoice or other document concerning any goods landed at a customs port or customs airport show them to be consigned to any person at any place in Brunei Darussalam where there is a senior officer of customs, the senior officer of customs at such customs port or customs airport may permit such goods to be forwarded to such place in which event such goods shall be deemed for the purposes of this Part to have first arrived on reaching such place and shall, for the purposes of Part IX, not be deemed to have been imported or landed until their arrival at such place.

(2) No goods deposited in a warehouse or exempted from being deposited, under subsection (1), shall be removed from such warehouse or from any place except with the permission of the proper officer of customs.

(3) This section shall not apply to —

(a) goods imported by post;

(b) goods imported by land or by sea at places of import where there is no customs warehouse; or

(c) passengers' baggage, containing personal effects only.

Warehouse deposit receipts.

62. (1) A warehouse deposit receipt shall be issued by the proper officer of customs for all dutiable goods deposited in a customs warehouse:

Provided that in the case of dutiable goods imported by land, no such receipt shall be issued except at the request of the importer or his agent.

(2) Where the warehouse deposit receipt is lost, a copy of such receipt duly certified by the proper officer of customs shall be supplied to the owner of the dutiable goods or his agent on delivery of an indemnity bond approved by a senior officer of customs and delivered to him at the customs office, securing the Government against any claim for loss owing to wrong delivery of the goods deposited.

(3) The holder or endorsee in due course of a warehouse deposit receipt or a certified copy thereof supplied under subsection (2) shall be deemed, for the purposes of this Order, to be the owner of the goods deposited, and delivery to the holder or endorsee, or the agent of the holder or endorsee, of such warehouse deposit receipt or certified copy thereof shall be a good and lawful delivery.

Licensing of duty-free shops.

63. (1) The Controller may, on payment of the prescribed fee, grant a licence to operate a duty-free shop to any person, in this section referred to as the licensee, and when granted, may suspend or withdraw such licence.

(2) Any such licence shall be for such period and subject to such conditions as the Controller in each case may specify in the licence.

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Controller.

(4) If it appears at any time that any goods have been sold or removed from such duty-free shop otherwise than in accordance with all the conditions of a licence granted under this section, the licensee of such duty-free shop shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Order, be liable to pay to the proper officer of customs the customs duty leviable to pay goods sold or removed.

Licensing of inland clearance depot.

64. (1) The Controller may, on payment of the prescribed fee, grant a licence to operate an inland clearance depot to any person, in this section referred to as the licensee, and when granted, may suspend or withdraw such licence.

(2) Any such licence shall be for such period and subject to such conditions as the Controller in each case may specify in the licence.

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Controller.

(4) If it appears at any time that in any inland clearance depot there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such inland clearance depot shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Order, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Controller that such deficiency has been caused by any leakage, breakage or other unavoidable accident, the Controller may remit the whole or any part of the customs duty leviable on the goods found deficient.

Power to open and examine packages.

65. A senior officer of customs may, at any time, direct that any goods or package lodged in any Ports Department warehouse, customs warehouse or licensed warehouse shall be opened, weighed or otherwise examined, and after such goods or package has been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

Detention of goods where doubt exists.

66. (1) The proper officer of customs may detain in a customs warehouse, customs office or any other place deemed under this Order to be under customs control any goods if he is in doubt whether such goods are dutiable or not or for any other reason.

(2) In every such case, the proper officer of customs shall forthwith make a report to a senior officer of customs who shall, without undue delay, decide whether such goods are dutiable or not.

(3) If any such goods are found not to be dutiable, no warehouse rent, handling or other charges shall be payable in respect thereof.

(4) The proper officer of customs may, subject to such conditions as he thinks fit, permit the deposit of any such goods in a customs warehouse.

Protection of officers of customs from liability.

67. No officer of customs or other person employed by the Government in connection with customs shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of such officer or any other officer of customs or person employed in connection with customs unless such loss is caused by his wilful neglect or default.

Payment of warehouse rent.

68. (1) The owner of any goods deposited in a customs warehouse, or his agent, shall pay to the proper officer of customs the warehouse rent at the prescribed rates which may be due in respect of such goods.

(2) Such warehouse rent shall be payable at the end of each month whether or not a demand in respect thereof is made and if not so paid may be recovered as a civil debt due to the Government.

Dangerous goods.

69. No goods of an inflammable nature or of such a nature as to be likely to cause detriment to other goods shall be deposited in any customs warehouse without the sanction of a senior officer of customs, and if any such goods are landed lawfully outside the limits of a port declared under the Ports Act (Chapter 144), they may be deposited, at the expense and risk of the importer thereof, in any place but at such limits as the senior officer of customs may think fit. Whilst so deposited, such goods shall be deemed to be in a customs warehouse and, unless within a period of 14 days they have been duly cleared or warehoused in some approved warehouse, shall, at the expiration of such period, be liable to be dealt with in the same manner as goods of a similar nature actually deposited in a customs warehouse. Such goods shall be chargeable with such expenses for securing, watching and guarding the same until sold, cleared or warehoused, as the senior officer of customs may think fit.

Government lien over goods deposited in customs warehouse.

70. (1) Goods of a perishable nature deposited in a customs warehouse shall be cleared forthwith, and if not so cleared a senior officer of customs may sell such goods.

(2) Goods of an inflammable nature deposited in a customs warehouse shall be cleared within 14 days of the date of deposit.

(3) Goods not of a perishable or inflammable nature deposited in a customs warehouse shall be cleared within 2 months of the date of deposit:

Provided that a senior officer of customs may permit any goods to remain deposited for such further periods of not less than one month at a time and not exceeding 6 months in the aggregate as he may think fit.

(4) If any goods are not cleared within the time specified in subsection (2) or (3) or if any warehouse rent in respect of any goods is not duly paid in the manner provided by section 68, a senior officer of customs may, after giving not less than 14 days notice in writing to the owner, if the name and address of such owner are known to him, or after due notice in the *Gazette*, if the name and address of such owner are not known to him, sell such goods by auction.

(5) The proceeds of the sale of any such goods shall be applied to the payment of any customs duties, warehouse rent, port dues and rates and other charges which may be due in respect of such goods or of any other goods deposited by the owner of such goods, and the surplus, if any, shall be paid to the owner of such goods, and if the owner cannot be found within 2 months of the sale, such surplus shall be paid to the general revenue of Brunei Darussalam.

(6) If at the sale of any goods no sufficient bid is forthcoming, the goods shall be forfeited to the Government and shall be disposed of in such manner as the Controller may direct.

(7) Every auction sale under this section shall be conducted by or in the presence of a senior officer of customs.

Removal of dutiable goods from warehouse.

71. No dutiable goods shall be removed from the Ports Department warehouse or customs control except —

(a) after payment of the import duty payable thereon;

(b) if such goods are in a Ports Department warehouse, customs warehouse or licensed warehouse, under such conditions as the Controller may impose, for deposit in another customs warehouse or licensed warehouse;

(c) under such conditions as the Controller may impose, for re-export from Brunei Darussalam; or

(d) under such conditions as the Controller may impose, for immediate use or release under emergency circumstances,

and in no case shall any goods be removed from a customs warehouse until all warehouse rent and other charges due in respect thereof have been paid:

Provided that petroleum in a licensed warehouse may be removed therefrom before payment of the import duty, if security has been lodged to the satisfaction of the Controller by which payment of duty is guaranteed, within such time as the Controller may allow.

Landing of goods for transhipment.

72. Goods arriving in Brunei Darussalam for transhipment and landed at a customs port to await the arrival of the vessel to which they are intended to be transhipped shall, if they are dutiable on import or export, or prohibited to be imported or exported, or belong to a class of such goods, be deposited in a Ports Department warehouse, customs warehouse or licensed warehouse or in any other warehouse approved by the Controller and shall be liable to warehouse rent at the prescribed rates applicable to such goods under the Ports Act (Chapter 144) or this Order or, if such rates are not prescribed, at the prescribed rates applicable under the Ports Act (Chapter 144) or this Order to goods warehoused prior to export:

Provided that the Controller may exempt any particular goods from the operation of this section.

Weighing and handling fees.

73. (1) All necessary operations relating to the loading, shipping, unloading, unshipping, landing, carrying, weighing, measuring, testing, opening, unpacking, repacking, bulking, sorting and marking of goods, including passengers' baggage, whether warehoused or not, shall be performed by or at the expense of the owner, importer, exporter, consignor, consignee or agent, as the case may be.

(2) Where the presence of officers of customs is required or necessary for the proper performance of such operations as are described in subsection (1), the owner, importer, exporter, consignor, consignee or agent, as the case may be, shall at his own expense provide such officers of customs with the necessary transport between the customs office and the place where such operations are to be performed.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, prescribe the charges to be paid for operations performed under section 11 and under this section by officers of customs or other persons under the control of the proper officer of customs and may remit any charges due.

PART IX

DECLARATION OF GOODS

Part A

Dutiable Goods

Declaration of dutiable goods imported.

74. (1) Every importer of dutiable goods, warehoused under section 61 or exempted from being warehoused by virtue of paragraph (a) of the proviso to subsection (1) of that section shall, before removal of such goods or any part thereof from customs control, make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of the goods imported, and in any particular case, the proper officer of customs may, by notice in writing, require the importer either personally or by his agent to submit such declaration within 3 days of the receipt of such notice, and the importer shall be required to comply with such notice if it is within his power to do so.

(2) Every importer of dutiable goods exempted from being warehoused under subsection (1) of section 61 shall, upon arrival of such goods at a place of import, make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of the goods imported, and shall pay the duties and other charges leviable thereon.

(3) The addressee of any dutiable goods imported by post shall, on demand by the proper officer of customs, make personally or by his agent to such officer a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of the goods imported.

Declaration to give full and true account.

75. (1) The declaration referred to in section 74 shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and of the country of origin of such goods:

Provided that if it is shown to the satisfaction of the proper officer of customs that such goods are urgently required for home consumption and that it is not within the power of the importer to furnish all the details required, such officer may release the goods on payment of such duty as he may estimate to be leviable thereon, together with a deposit of such amount as such officer may determine not exceeding such estimated duty and on an undertaking being given

by the importer or his agent to furnish a correct declaration within 10 days or such further period as the proper officer of customs may allow.

(2) On the submission of a correct declaration the proper amount of duty and other charges leviable shall be assessed and any money paid and deposited in excess of such amount shall be returned to the importer or his agent and in default of such submission within the period mentioned in subsection (1), the deposit shall be forfeited and paid into the general revenue of Brunei Darussalam.

Declaration of dutiable goods to be exported.

76. (1) Every exporter of dutiable goods shall —

(a) personally or by his agent make a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, of the goods to be exported;

(b) produce such goods to such proper officer of customs; and

(c) pay the export duty and any other charges leviable thereon to such proper officer of customs:

(2) The Controller may permit the export of any goods without prior payment of duty —

(a) if it is shown to his satisfaction that unnecessary delay will be occasioned in ascertaining the net weight of the goods before the export thereof is permitted; and

(b) if security has been given to his satisfaction for the payment of duty within such time as he may determine.

(3) The declaration referred to in paragraph (a) of subsection (1) shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and the country of origin of such goods.

Part B

Non-Dutiable Goods

Declaration of non-dutiable goods imported by sea or air.

77. (1) When any goods which are not dutiable on import are imported by sea or air, the importer thereof shall, before taking delivery of such goods and in any

case not later than 10 days after the arrival of the vessel or aircraft in which such goods are imported, make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, giving particulars of the goods imported.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft arriving at any customs port or airport shall deliver any inward cargo consisting of goods which are not dutiable until he has been authorised to do so by the proper officer of customs to whom the declaration referred to in subsection (1) has been made.

Declaration of non-dutiable goods imported by land.

78. When any goods which are not dutiable on import are imported by land, the importer thereof shall, upon the arrival of such goods, make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, giving particulars of the goods imported, and shall not proceed until this has been done.

Declaration of non-dutiable goods exported by sea or air.

79. (1) When any goods which are not dutiable on export are exported by sea or air, the exporter thereof shall, before such goods are shipped or water-borne to be shipped or loaded in aircraft, make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, giving particulars of the goods to be exported.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft shall allow any goods which are not dutiable on export to be shipped or loaded until he has been authorised by the proper officer of customs to do so.

Declaration of non-dutiable goods exported by land.

80. When any goods which are not dutiable on export are exported by land, the exporter thereof shall make personally or by his agent to the proper officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, giving particulars of the goods to be exported, and shall not proceed until this has been done.

Declaration to give full and true account.

81. The declarations referred to in sections 77, 78, 79 and 80 shall give a full and true account of the particulars for which provision is made:

Provided that if, in the case of imported goods, any of the particulars required are unknown to the importer thereof, delivery of such goods may be given on a written undertaking of the importer or his agent to furnish the necessary information to the proper officer of customs within 10 days of such undertaking or such further period as the proper officer of customs may allow, and if the importer or his agent fails to furnish the information as required by the undertaking, he shall be deemed to have failed to make the required declaration.

Part C

General Provisions

Passengers' baggage etc. and postal goods exempted.

82. This Part shall not apply —

(a) to accompanied passengers' baggage or personal effects;

(b) to fresh fish locally taken; and

(c) except as provided by subsection (3) of section 74, to any goods sent by post.

Saving provision.

83. Nothing in this Part shall release any person from any obligation imposed by or under any written law for the time being in force in Brunei Darussalam regulating the movement of any goods or currency.

Control of agents.

84. (1) No person shall act as an agent for transacting business relating to the import or export of any goods or luggage, including customs transit operations, or the entry or clearance of any vessel, except with the permission of a senior officer of customs.

(2) When any person applies to a senior officer of customs for permission to act as an agent, such officer may require the applicant to produce a written authority from the person on whose behalf he is to act and in default of the production of such authority, such officer may refuse such permission.

(3) Before granting such permission, a senior officer of customs may require such agent to give such security as he may consider adequate for the faithful and incorrupt conduct of such agent and of his clerks acting for him both as regards the customs and his employers.

(4) A senior officer of customs may suspend or cancel any permission granted under this section if the agent commits any breach of this Order or if he fails to comply with any direction given by an officer of customs with regard to the business transacted by the agent.

(5) Any person aggrieved by the decision of a senior officer of customs, other than the Controller, under this section in respect of any of the following matters —

- (a) refusal to grant permission;
- (b) the nature or the amount of security required from the agent;
- (c) suspension or cancellation of the permission,

may, within one month from the date on which the decision is notified to him, appeal to the Controller whose decision shall be final.

(6) The Controller may forfeit the whole or such part of the amount secured under subsection (3) as the Controller may think fit if he is satisfied that the agent or servant has committed or attempted to commit or abetted the commission of an improper or corrupt act.

(7) Any person who acts as agent when permission has not been granted to him under this section or while such permission is cancelled or suspended, or who makes or causes to be made a declaration of any goods without being duly authorised for such purpose by the proprietor or consignee of such goods, shall be guilty of an offence and liable on conviction to a fine not exceeding \$16,000.

(8) The clerk or servant of any person who deposits with a senior officer of customs a signed authority authorising him to do so may transact business generally at any customs office on behalf of such person:

Provided that a senior officer of customs may refuse to transact business with such clerk or servant unless such person authorising the clerk or servant identifies such clerk or servant to such officer as empowered to transact such business.

Person in charge of goods imported etc. by land deemed agents.

85. Notwithstanding anything contained in section 84, the person in charge of any goods imported or exported by land, who makes the declaration required by this Part, shall be deemed to be the agent of the importer or exporter, as the case may be.

PART X

DRAWBACK

Conditions under which drawback may be paid.

86. (1) When any goods, other than goods affected by section 88, upon which import duty has been paid are re-exported, nine-tenths of the duties calculated in accordance with subsection (2) may be repaid as drawback if —

(a) the goods are identified to the satisfaction of a senior officer of customs;

(b) the drawback claimed in respect of any one consignment of re-exported goods is not less than \$500;

(c) the goods are re-exported within one year from the date upon which import duty was paid or within such further period as may be approved by the Controller;

(d) payment of drawback upon goods of a class to which the goods to be re-exported belong has not been prohibited by regulations made under this Order;

(e) written notice has been given to a senior officer of customs at or before the time of re-export that a claim for drawback will be made, and such claim is made and established to the satisfaction of a senior officer of customs within 3 months of the date of re-export; and

(f) except as provided by section 89, the goods have not been used after importation.

(2) The amount of drawback allowed shall be calculated at the rate of the customs duty levied at the time of import.

Declaration by claimant.

87. Every person claiming drawback on any goods re-exported shall, personally or by his agent, make to a senior officer of customs a declaration, in such form and manner as the Controller may determine, either generally or in a particular case, that such goods have actually been re-exported and have not been re-landed and are not intended to be re-landed at any customs port, customs airport or place in Brunei Darussalam or within any port of Brunei Darussalam, where goods of a like description are liable to import duty.

Drawback on destroyed goods.

88. The Controller may allow drawback of import duty on goods which suffer deterioration or damage and are destroyed in the presence of a senior officer of customs, if the conditions set out in section 86 in respect of re-exported goods are fulfilled in respect of such destroyed goods, and sections 86 and 87 shall, with such modifications as the circumstances of the case may require, apply to such goods.

Refund to visitors and owners of samples.

89. When any personal effects or other goods which have been imported by visitors to Brunei Darussalam for their personal use, or samples imported by commercial travellers, or trade samples or such other goods as may be prescribed, on which import customs duty has been paid are re-exported within 3 months from the date of importation or within such further period as the Controller may either generally or in any special case allow, the Controller may allow a drawback of such import duty.

Relief from duty on goods temporarily imported.

90. Where the Controller is satisfied that goods as may be prescribed are imported only temporarily with a view to subsequent re-exportation, he may permit the goods to be delivered on importation without payment of duty subject to the payment of a deposit equivalent to not less than the amount of duty which would be payable if the goods were imported for home use or to security being given to the satisfaction of the Controller for the payment of such duty, and such deposit shall be refunded or such security discharged if the goods are re-exported within 3 months of the date of importation or within such further period as the Controller may allow.

Export and re-import of trade samples free of duty.

91. The Controller may, in any case, subject to such restriction as he may think fit to impose, allow any goods, which on the exportation thereof have been declared as trade samples, to be re-imported free of duty.

Drawback on imported goods used in manufacture.

92. Where any goods are prescribed to be goods in respect of which drawback may be allowed on re-export as part or ingredient of any goods manufactured in Brunei Darussalam and such prescribed goods are so re-exported by the manufacturer as part or ingredient of any goods manufactured in Brunei Darussalam, if import duty has been paid on such prescribed goods, the

Controller may, on such re-export, allow to the manufacturer a drawback of the duty so paid at such rates as may be prescribed if —

(a) the goods exported have been manufactured on the premises approved by the Controller;

(b) provision to the satisfaction of the Controller has been made for the control and supervision on such premises of the deposit and issue for use of the prescribed goods;

(c) such books of account are kept as the Controller may require for the purpose of ascertaining the quantity of the prescribed goods used in such manufacture;

(d) such prescribed goods have been imported by the manufacturer; and

(e) such prescribed goods are re-exported within one year of the date upon which import duty was paid or within such further period as may be approved by the Controller.

PART XI

MISCELLANEOUS

Documents to be produced on demand.

93. On demand of the proper officer of customs, the importer or exporter of any goods, or his agent, shall produce to such officer all invoices, bill of lading, certificates of origin or of analysis and any other documents, which such officer may require to test the accuracy of any declaration made by such importer or exporter to any officer of customs.

Keeping of business records.

94. (1) Every importer and exporter must keep or cause to be kept in Brunei Darussalam business records for a period of at least 7 years.

(2) Every such person must, as and when required by a proper officer of customs —

(a) make the records available to the Controller;

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

(c) answer any questions put to him by any such officer relevant to matters arising under this Order.

(3) Where, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the importer, exporter or agent thereof shall, at the request of a proper officer of customs, operate the device, or cause it to be operated, to make the information available to him.

(4) Any person who fails to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000.

Business records.

95. (1) For the purposes of section 94, the business records to be kept shall be those records generated by, or that otherwise come within the possession or control of, the importer or exporter that are necessary to verify —

(a) any entry required to be made under this Order;

(b) the importation or exportation of any goods;

(c) the custody or movement of any goods subject to customs control;
or

(d) the manufacture of any goods subject to excise duty.

(2) Without limiting the generality of subsection (1) and subject to subsections (3) and (4), the following records are required to be kept —

(a) shipping, importation, exportation and transportation documentation, including the following —

(i) all entries required to be made under this Order;

(ii) entry documentation, including any declaration, certificate, permit, licence etc.;

(iii) vouchers;

(iv) bills of lading, waybills, airway bills and consolidator waybills;

(v) shipping instructions and freight forwarders' instructions;

(vi) consignment notes;

- (vii) import charges, accounting details, including agents' fees, customs charges, wharf charges and other fees and charges;
 - (viii) packing lists;
 - (ix) manifests;
 - (x) out-turn records; and
 - (xi) goods' tally records;
- (b) ordering and purchase documentation, including the following —
- (i) orders and confirmation of orders;
 - (ii) purchase agreements;
 - (iii) products specifications;
 - (iv) contracts and conditions of purchase;
 - (v) royalty agreements, pricing agreements, negotiations on pricing arrangements, and warranty agreements;
 - (vi) invoices and pro forma invoices;
 - (vii) commissions and brokerage agreements and details; and
 - (viii) correspondence and any communication between the importer or exporter and any party related to the transaction;
- (c) manufacturing, stock and resale documentation, including the following —
- (i) inwards goods register;
 - (ii) stock register;
 - (iii) sales records;
 - (iv) receipts' journal;
 - (v) costing records; and
 - (vi) production records;

- (d) banking and accounting information, including the following –
- (i) letters of credit, applications for letter of credit and bank drafts;
 - (ii) remittance advice;
 - (iii) receipts and cashbooks;
 - (iv) credit card transactions;
 - (v) telegraphic money transfers;
 - (vi) offshore monetary transactions;
 - (vii) cheque records; and
 - (viii) evidence of payments by any other means, including information detailing non-cash compensation transactions;

(e) charts and codes of accounts, accounting instruction manuals and system and programme documentation that describes the accounting system used by the importer or agent thereof;

(f) papers, books, registers, discs, films, tapes, sound tracks and other devices or things in or on which information contained in the records described in paragraphs (a) to (e) are recorded or stored.

(3) Notwithstanding subsection (2) but subject to subsection (1), the licensee of a customs controlled area licensed for the purposes described in sections 60, 63 and 64, or under any other written law, shall keep or cause to be kept the records specified in paragraphs (a), (b), (c) and (f) of subsection (2), but shall not be required to keep any of the other records specified in that subsection.

(4) Notwithstanding subsection (2) but subject to subsection (1), every exporter shall keep or cause to be kept the records specified in paragraphs (a), (b) and (f) of subsection (2), but shall not be required to keep any of the other records specified in that subsection.

Audit or examination of business records.

96. (1) An officer of customs may at all reasonable times enter any premises or place where business records are kept pursuant to section 94 and audit or examine those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored.

(2) For the purposes of subsection (1), an officer of customs shall, subject to section 105, have full and free access to all lands, buildings and places and to all books, records and documents, whether in the custody or under the control of the importer or exporter, or any other persons, for the purpose of inspecting any book, record and document and any property, process or matter that he considers —

(a) necessary or relevant for the purpose of collecting any duty under this Order or for the purpose of carrying out any other provision of this Order; or

(b) likely to provide any information otherwise required for the purposes of this Order or any of those functions.

(3) The officer of customs may, without fee or reward, make copies from or take extracts from copies of any such book, record or document.

(4) Notwithstanding subsections (2) and (3) and subject to section 106, an officer of customs shall not enter any dwelling house except with the consent of an occupier or the owner thereof or pursuant to a warrant issued under section 104.

Persons to give information or produce documents.

97. (1) Every person required by a proper officer of customs to give information or to produce any travel document or any document on any subject into which it is the officer's duty to inquire under this Order and which it is in the person's power to give or produce shall give such information or to produce such document for inspection.

(2) The proper officer of customs may specify the customs office or station or other place at which such person is required to give information or to produce any document.

(3) In subsection (1), "travel document" means a passport furnished with a photograph of the holder or some other similar document establishing to the satisfaction of the proper officer of customs the identity of the holder and his nationality, domicile or place of permanent residence.

Service of notices.

98. (1) Every notice or document required by this Order to be served on any person may be served —

(a) personally upon such person; or

(b) by sending such notice or document to such person by registered post.

(2) A notice or document sent by registered post to any person shall, except for a notice referred to in subsection (4) of section 70, be deemed to have been served on him at the time at which it would have been delivered to him in the ordinary course of the post, if such notice or document was addressed —

(a) in the case of a body corporate or any unincorporated body of persons —

(i) to its registered address;

(ii) to its last known address; or

(iii) to any person authorised by it to accept service of process;

(b) in the case of an individual, to his usual or last known place of residence.

Baggage of passengers.

99. (1) Notwithstanding anything in this Order but subject to subsection (2), every passenger or other person arriving in or leaving Brunei Darussalam shall declare all dutiable or prohibited goods in his possession, either on his person or in any baggage or in any vehicle, to the proper officers of customs, and if he fails so to do such goods shall be deemed to be uncustomed goods.

(2) Notwithstanding anything in this Order, every passenger or other person arriving in Brunei Darussalam at a point of entry which has a Red Channel and a Green Channel shall proceed to the Red Channel to declare —

(a) all dutiable goods which exceed his duty-free allowance;

(b) any dutiable goods for which no duty-free allowance is granted; or

(c) prohibited goods for which a licence or permission is issued or granted,

in his possession, either on his person or in any baggage, to the proper officer of customs before he proceeds, and if he fails to do so those goods shall be deemed to be uncustomed goods.

(3) Any passenger or other person arriving in Brunei Darussalam who proceeds to the Green Channel with any goods to be declared under subsection

(2), in his possession, either on his person or in any baggage shall be presumed, until the contrary is proved, to be in possession of uncustomed goods.

(4) The baggage of passengers may be examined and delivered in such manner as the Controller may direct, and it shall be the duty of the person in charge of such baggage to produce, open, unpack and repack such baggage.

(5) In this section —

"Green Channel" means any passage or area in a customs airport or at such other place as the Controller may designate clearly indicated with a sign marked in green with the words "Customs" and "Nothing To Declare";

"Red Channel" means any passage or area in a customs airport or at such other place as the Controller may designate clearly indicated with a sign marked in red with the words "Customs" and "Goods To Declare".

Proper officer of customs may take samples.

100. (1) The proper officer of customs may at any time, if his duty requires, take samples of any goods to ascertain whether they are goods of a description liable to any customs duty, or to ascertain the customs duty payable on such goods or for such other purposes as the proper officer of customs may think necessary, and such samples may be disposed of in such manner as the Controller shall direct.

(2) No payment shall be made for the cost of any sample taken but the proper officer of customs shall, on demand, give a receipt for any such sample.

Packing of dutiable goods.

101. No dutiable goods shall be packed in any manner calculated to deceive an officer of customs so that a proper account of such goods may not be taken.

Addition or deduction of new or altered import duties in case of contract.

102. (1) Where any new import duty is imposed or where any such duty is increased, and any goods in respect of which the duty is payable are delivered after the day on which the new or increased duty takes effect, in pursuance of a contract made before such day, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser of the goods, as an addition to the contract price, a sum equal to any amount paid by him in respect of the goods on account of the new duty or increase of duty, as the case may be.

(2) Where any import duty is cancelled or decreased and any goods affected by the duty are delivered after the day on which the duty is cancelled or the decrease in the duty takes effect, in pursuance of a contract made before such day, the purchaser of the goods may, in the absence of the agreement to the contrary, if the seller of the goods has had in respect of those goods the benefit of the cancellation or decrease of the duty, deduct from the contract price a sum equal to the amount of the duty or decrease of duty, as the case may be.

Computer service.

103. (1) The Controller may establish and operate a computer service and make provision for any manifest, return, list, statement, declaration, direction, notice, permit, receipt or other document required or authorised by this Order to be made, served or submitted by electronic transmission, referred to in this Order as an electronic notice.

(2) A registered user may, in accordance with regulations made under subsection (13), make and serve an electronic notice to the computer account of the Controller.

(3) The Controller or any person authorised by him may, in accordance with regulations made under subsection (13), make and serve an electronic notice to the computer account of a registered user.

(4) Where an electronic notice is transmitted to the computer account of the Controller using the authentication code assigned to a registered user —

(a) with or without the authority of the registered user; and

(b) before the notification to the Controller by the registered user, in such manner as the Controller may determine, of cancellation of the authentication code,

such notice shall, for the purposes of this Order, be presumed to be made by the registered user unless he adduces evidence to the contrary.

(5) Where the registered user alleges that he has transmitted no such electronic notice referred to in subsection (4), the burden is also on him to adduce evidence of such fact.

(6) For the purposes of this Order, an electronic notice or a copy thereof shall not be inadmissible in evidence merely on the basis that it was transmitted without the making or delivery of any equivalent document or counterpart in paper form.

(7) Notwithstanding any other written law, in any proceedings under this Order, an electronic notice or a copy thereof, including a print-out of such notice or copy, or any database report, including a print-out of such report, relating to such notice —

(a) certified by the Controller to contain all or any information transmitted in accordance with this section; and

(b) duly authenticated in the manner specified in subsection (8) or otherwise duly authenticated by showing that there is no material discrepancy between the electronic notice or copy thereof certified by the Controller and the copy of the same electronic notice kept by an independent record-keeper appointed under any regulations made under subsection (13),

shall be admissible as evidence of the facts stated or contained therein.

(8) For the purposes of this section, a certificate —

(a) giving the authentication code and other particulars of any user and device, if known, involved in the production and transmission of, and identifying the nature of, the electronic notice or copy thereof; and

(b) purporting to be signed by the Controller or by a person occupying a responsible position in relation to the operation of the computer service at the relevant time,

shall be sufficient evidence that the electronic notice or copy thereof has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(9) Where an electronic notice or a copy thereof is admissible under subsection (7), it shall be presumed, until the contrary is proved, that the contents of the electronic notice or copy thereof have been accurately transmitted.

(10) The Controller may, for the purpose of facilitating any electronic transmission under this section, approve the use in any such electronic transmission of symbols, codes, abbreviations or other notations to represent any particulars or information required under this Order.

(11) Any officer of customs or any other person employed in the administration of this Order shall not be treated as having contravened any provision of any written law relating to confidentiality or secrecy merely because he communicates to the independent record-keeper or his employee or permits the independent record-keeper or his employee to have access to any electronic notice or any information contained therein.

(12) The independent record-keeper, his employee and any person transmitting an electronic notice on behalf of another person shall not divulge or disclose the contents of any electronic notice or a copy thereof without the prior written consent of the Controller.

(13) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) prescribing the conditions for subscription to the computer service, including the manner in which the authentication codes are to be assigned;

(b) prescribing the manifests, returns, lists, statements, declarations, directions, notices, permits, receipts or other documents which may be transmitted through the computer service, including the form and manner in which they are to be transmitted;

(c) for the correction of errors in or amendments to electronic notices;

(d) prescribing the procedure for use of the computer service, including the procedure in circumstances where there is a breakdown or interruption in the service;

(e) for the appointment of an independent record-keeper to be charged with the duty to maintain, for such period as the Controller may determine, a record of all electronic notices and transactions made through the data service provider between the Controller and the registered users, such a duty to include keeping the database reports;

(f) for the independent record-keeper to produce a copy of the relevant record pertaining to any electronic notice or a copy thereof to either the Controller or the registered user, whose electronic notice is in issue, when requested by either party to do so;

(g) for the standards of security, confidentiality, data integrity and conduct of the computer service and for the review of the operations and activities of the data service provider by such authority or expert as may be prescribed; and

(h) generally for the better provision of the computer service.

PART XII

SEARCH, SEIZURE AND ARREST

Issue of search warrant.

104. (1) Whenever it appears to any magistrate, or any senior officer of customs not below the rank of Assistant Controller, upon information, and after any inquiry which he may think necessary, that there is reasonable cause to believe that in any dwelling house, shop or other building or place, there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Order, or as to which any offence under this Order has been committed, or any book, record, document or other article relating to any such goods, such magistrate or the senior officer of customs may issue a warrant authorising any officer of customs named therein, by day or night and with or without assistance —

(a) to enter such dwelling house, shop or other building or place and there to search for and seize any goods reasonably suspected of being prohibited or uncustomed goods, or goods liable to forfeiture under this Order, or as to which any offence under this Order is suspected to have been committed, and any book, record, document or other article which may reasonably be believed to contain information as to any offence under this Order;

(b) to arrest any person being in such dwelling house, shop, building or place, in whose possession such goods may be found, or whom such officer may reasonably suspect to have concealed or deposited such goods; and

(c) to make copies of and take any reasonable steps to preserve any book, record, document or other article referred to in paragraph *(a)*.

(2) Such officer may if it is necessary so to do —

(a) break open any outer or inner door of such dwelling house, shop or other building or place, and enter thereinto;

(b) forcibly enter such place and every part thereof;

(c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect; and

(d) detain every person found in such place until such place has been searched.

Conditions for entry into buildings.

105. Notwithstanding anything in this Order, every provision of this Order that confers on an officer of customs the power to enter any dwelling house, shop or other building or place, whether under the authority of a warrant or otherwise, is subject to the following conditions —

(a) reasonable notice of intention to enter must be given, except where it would frustrate the purpose of the entry;

(b) entry must be made at a time that is reasonable in the particular circumstance, except where it would frustrate the purpose of the entry;

(c) identification must be produced on initial entry and, if requested, at any subsequent time; and

(d) the authority and purpose for the entry must be clearly stated to the owner or occupier of the dwelling house, shop, other building or place if he is present.

When search may be made without warrant.

106. Whenever it appears to any senior officer of customs that there is reasonable cause to believe that in any dwelling house, shop or other building or place there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Order, or any other evidence relating to the commission of an offence under this Order, or as to which an offence under this Order has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant such goods or evidence are likely to be removed, such officer may exercise in, upon and in respect of such dwelling house, shop or other building or place all the powers mentioned in section 104 in as full and ample a manner as if he were authorised so to do by a warrant issued under such section.

Power to search vessels and aircraft.

107. (1) A proper officer of customs may —

(a) go on board any vessel or aircraft in any customs port or customs airport or place or within territorial waters;

(b) require the master of such vessel or the pilot of such aircraft to give such information relating to the vessel or aircraft, cargo, stores, crew, passengers or voyage as he may think necessary;

(c) rummage and search all parts of such vessel or aircraft for prohibited or uncustomed goods;

(d) examine all goods on board and all goods then being loaded or unloaded;

(e) demand all documents which ought to be on board such vessel or aircraft;

(f) require all or any such documents to be brought to him for inspection; and

(g) retain any such documents brought to him for inspection,

and the master of any vessel and the pilot of any aircraft refusing to allow such officer to board or search such vessel or aircraft, or refusing to give such information or to produce such documents on demand shall be guilty of an offence.

(2) If any place, box or thing on board such vessel or aircraft is locked and the key withheld, such officer may break open any such place, box or thing.

(3) If any goods be found concealed on board any vessel or aircraft, they shall be deemed to be uncustomed goods.

Senior officer of customs to exercise powers of search.

108. Every senior officer of customs shall be entitled to exercise in and upon and in respect of any vessel, aircraft, landing place, wharf or free trade zone all the powers mentioned in section 104 in as full and ample a manner as if he were authorised so to do by a warrant issued under such section.

Access to recorded information or computerised data.

109. (1) Any officer of customs exercising his powers under sections 104, 105, 106, 107, 110 and 111 shall be given access to any recorded information or computerised data, whether stored in a computer or otherwise.

(2) In addition, an officer of customs exercising his powers under sections 104, 105, 106, 107, 110 and 111 may —

(a) inspect and check the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with such information or data; and

(b) require —

- (i) the person by whom or on whose behalf the officer of customs has reasonable cause to suspect the computer is or has been so used; or
- (ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material,

to provide him with such reasonable assistance as he may require for the purposes of this section.

(3) In subsection (1), "access" includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerised data.

Access to places or premises.

110. (1) Any senior officer of customs shall, for the purposes of this Order, at all times have access to any place or premises where an importer carries on his business or where any person who has dealings with such importer carries on his business.

(2) Where any senior officer of customs enters upon any premises in accordance with this section, he may —

(a) require the importer or the person who has dealings with such importer, as the case may be, to produce any book, data, document or other record, or thing which such importer or person is required to keep under this Order, or which relate to any imported goods;

(b) examine any book, data, document or other record, or thing and make copies of or take extracts from any such book or document;

(c) seize and detain any book, data, document or other record, or thing if, in his opinion, it may afford evidence of the commission of any offence under this Order;

(d) require the importer or the person who has dealings with such importer or any person employed by such importer or person to answer questions relating to —

- (i) any book, data, document or other record, or thing;

(ii) any entry in any book, data, document or other record, or thing; or

(iii) any imported goods;

(e) require any container, envelope or other receptacle in any such premises to be opened;

(f) at the risk and expense of the importer or the person who has dealings with such importer, open and examine any packages, or any goods or materials, in any such premises.

(3) Where the senior officer of customs acting under this section is unable to obtain free access to any premises where an importer carries on his business or where any person who has dealings with such importer carries on his business or to any receptacle contained in those premises, he may, at any time, enter such premises and open such receptacle in such manner, if necessary by force, as he may think necessary.

(4) Where, on the entry upon any premises under this section, any dutiable goods are found in relation to which any offence under this Order has been committed, such dutiable goods shall be liable to forfeiture.

Officers of customs may stop and search conveyances.

111. (1) Any officer of customs may stop and examine any vehicle for the purpose of ascertaining whether any dutiable, uncustomed or prohibited goods are contained therein.

(2) The person in charge or in control of any vehicle shall produce his vehicle to the proper officer of customs, and shall, if so required, move his vehicle to another place for examination, and shall not proceed until permission to do so has been given by the proper officer of customs.

(3) The person in charge or in control of any vehicle stopped for examination under subsection (1) shall, on request by the proper officer of customs, open all parts of the vehicle for examination by the officer and take all measures necessary to enable such examination as the officer considers necessary to be made.

Power to set up roadblocks.

112. (1) Notwithstanding anything contained in any other written law, any senior officer of customs may, if he thinks it necessary to do so for the enforcement of this Order, erect or place or cause to be erected or placed any barrier on or across any public road or street or in any public place in such

manner as he may think fit; and any proper officer of customs may take all reasonable measures to prevent any person from passing or any vehicle from being driven past any such barrier, including any measure to pursue and apprehend any such person or stop any such vehicle where, having regard to the circumstances, he is of the opinion that if such measures are not taken the escape of such person or vehicle to avoid detection or otherwise is likely to be imminent.

(2) Any person who fails to comply with any signal of a proper officer of customs requiring such person or vehicle to stop before reaching any such barrier, or who attempts to cross, remove or knock down any such barrier, shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both; and any proper officer of customs may, without warrant, arrest such person unless he gives his name and address and otherwise satisfies the proper officer of customs that he will duly answer any summons or other proceedings that may be taken against him.

(3) No proper officer of customs shall be liable for any loss, injury or damage caused to any person or property consequent upon his taking the steps mentioned in subsections (1) and (2).

Power to open packages and examine goods.

113. Any proper officer of customs may examine any goods in the course of being imported or exported or intended to be imported or exported and may for the purposes of such examination bring the same to a customs office and may open any package or receptacle.

Search of persons arriving in Brunei Darussalam.

114. Any person landing, or being about to land, or having recently landed, from any vessel or aircraft, or leaving any vessel or aircraft in territorial waters, whether for the purpose of landing or otherwise, or entering or having recently entered Brunei Darussalam by land shall, on demand by any proper officer of customs, either permit his person, goods and baggage to be searched by such officer, or together with such goods and baggage accompany such officer to a customs office or police station and there permit his person, goods and baggage to be searched by an officer of customs:

Provided that —

(a) any person who requests that his person be searched in the presence of a senior officer of customs shall not be searched except in the presence of and under the supervision of such officer, but such person may be detained until the arrival of such officer, or taken to any customs office or police station where such officer may be found;

(b) the goods and baggage of any person who requests to be present when they are searched and so presents himself within a reasonable time shall not be searched except in his presence;

(c) no female shall be searched except by another female with strict regard to decency.

Seizure of goods subject of offence.

115. (1) All goods in respect of which there has been, or there is, reasonable cause to suspect that there has been committed any offence against this Order, or any breach of any of the provisions of this Order or of any restriction or condition subject to or upon which any licence or permit has been granted, together with any receptacle, package, conveyance, vessel not exceeding 200 tons nett registered tonnage, or aircraft, in which the same may have been found or which has been used in connection with such offence or breach, and any book or document which may reasonably be believed to have a bearing on the case, may be seized by any officer of customs in any place either on land or in territorial waters.

(2) All such goods and such receptacles, packages, conveyances, vessels or aircraft shall, as soon as conveniently may be, be delivered into the care of a proper officer of customs whose duty it is to receive the same.

(3) Whenever any goods, conveyances, vessels or aircraft are seized under this Order, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such goods, if known, either by delivering such notice to him personally or by post at his residence, if known:

Provided that such notice shall not be required to be given where such seizure is made on the person, or in the presence of the offender or the owner or his agent, or in the case of a vessel or an aircraft, in the presence of the master or pilot, as the case may be.

(4) The provisions of this section relating to the seizure of goods shall apply to all the contents of any package or receptacle in which the same are found and to any article used to conceal the same.

(5) The provisions of this section relating to the seizure of any vessel or aircraft shall apply also to the tackle, equipment and furnishing of such vessel or aircraft.

(6) The provisions of this section relating to the seizure of conveyances shall apply to all equipment thereof and to any animal by which the same is drawn.

(7) Any goods of a perishable nature or any animal seized under this section may be sold or destroyed forthwith, as appropriate in the circumstances, on the instructions of a senior officer of customs and where it is so sold, the proceeds of sale shall be held to abide the result of any prosecution or claim.

(8) Any goods which are of a dangerous character or which cannot be stored or removed without undue expense may be destroyed on the instructions of a senior officer of customs.

(9) No person shall be entitled to maintain any action on account of any act done or any decision taken by an officer of customs under this section, and no court shall have any jurisdiction to entertain any such action.

Retention of documents obtained during search.

116. (1) Where an officer of customs or any person authorised under this Order carries out any lawful search, inspection, audit or examination under this Order and has reasonable cause to believe that any document coming into his possession during such search, inspection, audit or examination is evidence of the commission of an offence against this Order or is intended to be used for the purpose of committing any offence against this Order, such officer or authorised person may, subject to section 134, take possession of and retain the document.

(2) Where an officer of customs or any person authorised under this Order takes possession of a document under subsection (1), he shall, at the request of the person otherwise entitled to the document, provide such person with a copy of the document certified by or on behalf of the Controller under the seal of the customs as a true copy.

(3) Every copy so certified is admissible in evidence in all courts as if it were the original.

Release of conveyance, vessel, aircraft or movable property under bond.

117. (1) When any conveyance, vessel, aircraft or movable property has been seized under this Order, a senior officer of customs may temporarily return such conveyance, vessel, aircraft, or movable property to the owner of the same on security being furnished to the satisfaction of such officer and subject to such conditions as such officer may impose, that the conveyance, vessel, aircraft or movable property shall be surrendered to him on demand.

(2) Any person who —

(a) fails to surrender on demand to a senior officer of customs the conveyance, vessel, aircraft or movable property temporarily returned to him under subsection (1); or

(b) fails to comply with or contravenes any of the conditions imposed under subsection (1),

shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both, and any security or bond being furnished shall be forfeited.

Powers of arrest.

118. (1) Any officer of customs may arrest without warrant —

(a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of, an offence against this Order;

(b) any person whom he may reasonably suspect to have in his possession any uncustomed or prohibited goods or any goods liable to seizure under this Order;

(c) any person against whom a reasonable suspicion exists that he has been guilty of an offence against this Order,

and may search or cause to be searched any person so arrested:

Provided that no female shall be searched except by another female with strict regard to decency.

(2) Every person so arrested shall be taken to a police station or may be detained in the custody of a proper officer of customs.

(3) When any person is arrested by an officer of customs, such officer shall comply with section 33 of the Criminal Procedure Code (Chapter 7) as if he were a police officer.

(4) A senior officer of customs has the same powers as are possessed under section 347 of the Criminal Procedure Code (Chapter 7) by a police officer not below the rank of Inspector to admit to bail any person arrested under this section.

(5) If any person liable to arrest under this Order is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may, at any time afterwards, be arrested and be dealt with as if he had been arrested at the time of committing such offence.

(6) No person who has been arrested by an officer of customs shall be released except on his own bond or on bail or under the special order in writing of a magistrate or a senior officer of customs.

PART XIII

PROVISIONS AS TO TRIAL AND PROCEEDINGS

Court of Magistrate to have full jurisdiction.

119. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under this Order and shall have the power to impose the full penalty or punishment in respect of the offence.

Burden of proof.

120. If in any prosecution in respect of any goods seized for non-payment of duties or for any other cause of forfeiture or for the recovery of any penalty or for the condemnation or forfeiture of any vessel or goods or for any offence under this Order, any dispute arises —

(a) whether the customs duties have been paid in respect of such goods;

(b) whether the same have been lawfully imported or exported or lawfully landed or loaded, or lawfully manufactured;

(c) whether any goods are exempt from customs duty under section 12;

(d) concerning the place whence such goods were brought; or

(e) whether drawback has been lawfully claimed or where such goods were loaded,

then and in every such case the burden of proof thereof shall lie on the defendant.

Presumptions of possession of dutiable, prohibited or uncustomed goods.

121. (1) Any person who is proved to have had in his possession or custody or under his control —

(a) any thing containing any dutiable, prohibited or uncustomed goods;

(b) the keys of any thing containing any dutiable, prohibited or uncustomed goods;

(c) the keys of any place or premises or any part thereof in which any dutiable, prohibited or uncustomed goods are found; or

(d) a document of title relating to any dutiable, prohibited or uncustomed goods or any other document intended for the delivery of any dutiable, prohibited or uncustomed goods,

shall, until the contrary is proved, be presumed to have had such dutiable, prohibited or uncustomed goods in his possession.

(2) If any dutiable, prohibited or uncustomed goods are found in any ship or aircraft, it shall, until the contrary is proved, be presumed that such dutiable, prohibited or uncustomed goods have been imported in such ship or aircraft with the knowledge of the master or the commander or captain thereof.

(3) If any dutiable, prohibited or uncustomed goods are found in any vehicle, it shall, until the contrary is proved, be presumed to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

Proportional examination or testing of goods seized to be accepted by courts.

122. When any goods suspected of being prohibited or uncustomed or otherwise liable to seizure have been seized, it shall be sufficient to open, examine and, if necessary, test the contents of such proportion of the goods seized as the proper officer of customs may determine and the court may presume that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

Evidence of analysis may be given in writing.

123. (1) In any prosecution for a breach of this Order, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than 3 days before the day on which the summons is returnable.

(2) In like manner, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the defendant, be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness.

(3) A copy of the certificate referred to in subsections (1) or (2) shall be sent to the defendant or the prosecutor, as the case may be, at least 10 days before the day fixed for the hearing, and if it is not so sent the court may adjourn the hearing on such terms as it may think proper.

(4) Analysts are by this Order bound to state the truth in certificates of analysis under their hands.

(5) If any analyst is called by the defendant as provided by subsection (1), he shall be called at the expense of the defendant unless the court otherwise directs.

(6) If in any trial or proceedings under this Order it is necessary to determine the alcoholic content of any liquor, the certificate of a senior officer of customs as to such alcoholic contents shall be accepted as if such officer were an analyst and, in any such case, subsections (1), (4) and (5) shall apply in the same manner and to the same extent as if such officer were an analyst.

(7) In this section, "analyst" includes —

(a) any person employed for the time being wholly or partly on analytical work in any department of the Government;

(b) any chemist employed by the governments of Brunei Darussalam, Malaysia or Singapore:

Provided that no such chemist shall, without his consent, be called as a witness in connection with any report signed by him;

(c) any other person to whom this section is declared by the Minister, by notification published in the *Gazette*, to apply.

Proof as to registration or licensing of vessels in Brunei Darussalam.

124. Where in any prosecution under this Order it is relevant to ascertain particulars as to the registration or licensing of any vessel registered or licensed in any port of Brunei Darussalam, a certificate purporting to be signed by the officer responsible under any written law for the time being in force in Brunei Darussalam for such registration or licensing shall be *prima facie* evidence as to all particulars concerning such registration or licensing contained therein, and the burden of proving the incorrectness of any particulars stated in such certificate shall be on the person asserting the same.

Proof as to tonnage or build of craft.

125. (1) Where in any prosecution under this Order it is relevant to ascertain the tonnage or build or such other particulars descriptive of the identity of a craft, and if any of these particulars relating to the identity of the craft is in question, then any document produced by the prosecution purporting to be a certificate in respect of any such matter given and signed by any officer responsible for such matter under any written law for the time being in force in Brunei Darussalam shall be admissible in evidence, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

(2) This section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

Imprisonment in default etc.

126. Notwithstanding the provisions of the Criminal Procedure Code (Chapter 7), the period for which the court directs the offender to be imprisoned in default of payment of any fine under this Order, or in default of a sufficient distress to satisfy any such fine, shall not exceed the following scale —

<i>where the fine</i>	<i>the period shall not exceed</i>
does not exceed \$100	2 months;
exceeds \$100 but does not exceed \$1,000	4 months;
exceeds \$1,000 but does not exceed \$5,000	6 months;

with an additional 2 months for every \$1,000 after the first \$5,000 of the fine until a maximum period of 3 years is reached.

Manner of seizure not to be enquired into on trial or on appeal.

127. On any trial before any court and in any proceedings on appeal to any appellate court, relating to the seizure of goods subject to forfeiture under this Order, the court shall proceed to such trial or hear such appeal on the merits of the case only, without enquiring into the manner or form of making any seizure, except in so far as the manner and form of seizure may be evidence on such merits.

Protection of informers from discovery.

128. (1) Except as provided under subsections (3), (4) and (5), the name and address of an informer and the substance of the information received from an informer shall be kept secret and shall not be disclosed by any proper officer of

customs or any person who, in the ordinary course of his duties, comes into possession of, or has control of, or access to such information to any person except the designated officer of customs authorised by the Controller.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(3) Except as provided in subsection (5), no witness in any civil or criminal proceedings under or arising from this Order shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(4) If any book, document or paper which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(5) If on the trial for any offence against this Order the court after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any civil or other criminal proceedings the court is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

Confidentiality of information.

129. (1) Any information relating to valuation is confidential and any proper officer of customs or any person who in the ordinary course of his duties come into possession of or has control of or access to such information shall not —

(a) communicate such information; or

(b) suffer or permit any person to have access to such information.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) Notwithstanding subsection (1), it shall not be an offence —

(a) as regards information relating to the valuation of imported goods, if disclosure is made —

- (i) on the order of a court; or
- (ii) after written consent has been obtained from the person or Government giving such information; and

(b) as regards information relating to the valuation of exported goods, if the Controller thinks it expedient or necessary to allow disclosure of certain information to such person as he thinks fit.

Goods liable to seizure liable to forfeiture.

130. All goods liable to seizure under this Order shall be liable to forfeiture.

Court to order disposal of goods seized.

131. (1) Any order for the forfeiture or for the release of any thing liable to forfeiture under this Order may be made by the court before which the prosecution with regard thereto has been held.

(2) An order for the forfeiture of goods or of the amount realised by sale under subsection (7) of section 115 may be made if it is proved to the satisfaction of the court that an offence against this Order has been committed and that the goods were the subject matter of, or were used in the commission of, the offence, notwithstanding that no person may have been convicted of such offence.

(3) All goods forfeited shall be delivered to a proper officer of customs and shall be disposed of in accordance with the directions of the Controller.

Goods seized in respect of which there is no prosecution forfeited if not claimed within one month.

132. (1) If there is no prosecution with regard to any goods seized under this Order, such goods shall be taken and forfeited at the expiration of one month from the date of seizure unless a claim thereto is made before such date in the manner set out in this section.

(2) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or by his agent authorised in writing give written notice to a senior officer of customs that he claims the same.

(3) On receipt of such notice the senior officer of customs shall refer the claim to the Controller who may direct that such goods be released or may direct such senior officer of customs to refer the matter to a court for his decision.

(4) The court shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before it.

(5) Upon his appearance or default to appear, due service of such summons being proved, the court shall proceed to the examination of the matter and on proof that an offence against this Order has been committed and that such goods were the subject matter, or were used in the commission, of such offence shall order the goods to be forfeited, or may, in the absence of such proof, order their release.

(6) In any proceedings under subsections (4) and (5), section 120 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were seized as if such owner or person had been the defendant in a prosecution under this Order.

(7) All goods forfeited under subsection (1) shall be disposed of in accordance with the directions of the Controller.

Goods or amount forfeited may be delivered or refunded to owner or other person.

133. The Minister may, upon application made to him in writing through the Controller, order —

(a) any goods seized under this Order; or

(b) any amount realised by sale under subsection (7) of section 115 or any amount secured under subsection (1) of section 117,

whether forfeited, or taken and forfeited, pursuant to section 131 or 132, to be delivered or refunded, as the case may be, to the owner or other person entitled thereto on payment of such amount and upon such terms and conditions as he may think fit.

Seized documents subject to court order and proceedings.

134. (1) Where an officer of customs or any person authorised under this Order takes possession of and retains any document under section 116, the following provisions shall apply —

(a) in any proceedings for an offence relating to the document, the court may order, either at the hearing or on a subsequent application, that the document be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner and under such conditions as the court thinks fit;

(b) an officer of customs or an authorised person may at any time, unless an order has been made under paragraph *(a)*, return the document to the person from whom it was taken or apply to a court for an order as to its disposal; and on any such application, the court may make any order that it may make under paragraph *(a)*;

(c) if proceedings for an offence relating to any document are not brought within a period of 3 months after the date on which possession was taken, any person claiming to be entitled to such document may, after the expiration of such period, apply to a court for an order that it be delivered to him; and on any such application, the court may adjourn the application, on such terms as he thinks fit, for proceedings to be brought, or may make any order that it may make under paragraph *(a)*.

(2) Where a person is convicted in proceedings for an offence relating to any document to which this section applies, and an order is made under this section, the operation of the order shall be suspended —

(a) until the expiration of the time prescribed for the filing of notice of appeal or an application for leave to appeal;

(b) where notice of appeal is filed within the prescribed time, until the determination of the appeal;

(c) where application for leave to appeal is filed within the prescribed time, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.

(3) Where the operation of any such order is suspended until the determination of an appeal, the court determining the appeal may by order annul or vary the order made under this section.

Conviction under other law.

135. Nothing in this Order contained shall prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law, but no person shall be punished more than once for the same offence.

Compounding of offences.

136. (1) The Controller or any senior officer of customs authorised by the Controller may compound any offence under paragraphs *(a)*, *(b)*, *(e)* and *(f)* of subsection (1) of section 138, paragraphs *(d)*, *(e)*, *(f)*, *(g)* and *(h)* of subsection (1) of section 140 and any other offence under this Order which is prescribed to be a compoundable offence, by collecting from the person reasonably suspected of having committed such offence a sum not exceeding \$1,000.

(2) On the payment of such sum —

(a) the person reasonably suspected of having committed an offence, if in custody, shall be discharged and no further proceedings shall be taken against him; and

(b) any property seized shall be released and no further proceedings shall be taken against such property, unless the property consists of goods the import of which is prohibited in which case such goods shall be forfeited:

Provided that where the prohibition is conditional upon a licence being issued or permission being granted in respect of the import of such goods, a senior officer of customs may release such goods if a licence or permission is subsequently issued or granted by any relevant authority.

No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause.

137. No person shall, in any proceedings before any court in respect of the seizure of any goods in the exercise or purported exercise of any power conferred by this Order, be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

PART XIV

OFFENCES AND PENALTIES

Penalty on making incorrect declarations and on falsifying documents.

138. (1) Any person who —

(a) makes, orally or in writing, or signs any declaration, certificate or other document required by this Order which is untrue or incorrect in any particular;

(b) makes, orally or in writing, or signs any declaration or document, made for consideration of any officer of customs on any application presented to him, which is untrue or incorrect in any particular, or which is incomplete by omitting material particular therefrom;

(c) counterfeits or falsifies, or uses, when counterfeited or falsified, any document which is or may be required by this Order, or any document used in the connection of any business or matter relating to customs;

(d) fraudulently alters any document, or counterfeits the seal, signature, initials or other mark of, or used by, any officer of customs for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to customs;

(e) being required by this Order to make a declaration of dutiable goods imported, exported or transhipped, fails to make such declaration as required; or

(f) fails or refuses to produce to a proper officer of customs any document required to be produced under section 93,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$40,000 or the equivalent of the amount of customs duty payable, whichever is the greater, imprisonment for a term not exceeding one year or both.

(2) When any such declaration, whether orally or written, or any such certificate or other document as is referred to in paragraphs (a), (b) and (c) of subsection (1) has been proved to be untrue, incorrect, counterfeited or falsified in whole or in part, it shall be no defence to allege —

(a) that such declaration, certificate or other document was made or used inadvertently or without criminal or fraudulent intent, or that the person signing the same was not aware of, or did not understand the contents of, such document; or

(b) where any declaration was made or recorded in the Malay or English languages by interpretation from any other language, that such declaration was misinterpreted or not fully interpreted by any interpreter provided by the declarant.

(3) When a failure to make a declaration referred to in paragraph (e) of subsection (1) has been proved, it shall be no defence to allege that the failure was inadvertent or without criminal or fraudulent intent or that it was not known that such a declaration was required to be made.

Penalty on refusing to answer questions or on giving false information or false document.

139. (1) Any person who, being required by this Order to answer any question put to him by any proper officer of customs, or to give any information or produce any document which may reasonably be required of him by the officer and which it is in his power to give —

(a) refuses to answer the question or does not truly answer the question;

(b) refuses to give such information or produce such document; or

(c) furnishes as true any information or document which he knows or has reason to believe to be false,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding one year or both.

(2) When any such answer, information or document is proved to be untrue or incorrect in whole or in part, it shall be no defence to allege that such answer, information or document or any part thereof was made or furnished or produced inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

Penalty for various smuggling offences.

140. (1) Any person who —

(a) is concerned in importing or exporting any uncustomed goods, or any prohibited goods contrary to such prohibition, whether such uncustomed or prohibited goods have been shipped, unshipped, delivered or not;

(b) ships, unships, delivers or assists or is concerned in the shipping, unshipping or delivery of any uncustomed goods, or any prohibited goods contrary to such prohibition;

(c) illegally removes or withdraws or in any way assists or is concerned in the illegal removal or withdrawal of any goods from any customs control;

(d) knowingly harbours, keeps, conceals, or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed, any uncustomed or prohibited goods;

(e) is in any way knowingly concerned in conveying, removing, depositing or dealing with any uncustomed or prohibited goods with intent to defraud the Government of any customs duty thereon, or to evade any of the provisions of this Order or to evade any prohibition applicable to such goods;

(f) being a passenger or other person, is found to have in his baggage or upon his person or otherwise in his possession, after having denied that he has any dutiable or prohibited goods in his baggage or upon his person or otherwise in his possession, any dutiable or prohibited goods;

(g) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any customs duty, or in evasion or attempt at evasion of any prohibition of import or export; or

(h) sells, exchanges or gives away or offers to sell, exchange or give away to any person in Brunei Darussalam, goods which are his duty-free allowances in Brunei Darussalam,

shall be guilty of an offence and liable on conviction —

- (i) in the case of uncustomed goods, such goods being dutiable goods, for the first offence, to a fine of not less than 6 times the amount of the customs duty or \$40,000, whichever is the lesser amount, and of not more than 20 times the amount of customs duty or \$40,000, whichever is the greater amount, and for a second or any subsequent conviction, to such fine, to imprisonment for a term not exceeding 2 years or both:

Provided that when the amount of customs duty cannot be ascertained, the penalty may amount to a fine not exceeding \$40,000;

- (ii) in the case of uncustomed goods, such goods not being dutiable or prohibited, to a fine not exceeding twice the value of the goods or \$8,000, whichever is the greater amount:

Provided that where the value cannot be ascertained, the penalty may amount to a fine not exceeding \$8,000;

- (iii) ^{subject to sub-paragraph (iv),} in the case of prohibited goods, to a fine of not less than twice the value of the goods or \$40,000, whichever is the lesser amount, and of not more than 5 times the value of the goods or \$40,000, whichever is the greater amount:

s 98/08

Provided that where the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding \$40,000_x;

s 98/08

- (iv) ... s 98/08

(2) In any prosecution under this section or under section 147, any uncustomed or prohibited goods shall be deemed to be uncustomed or prohibited goods, as the case may be, to the knowledge of the defendant unless the contrary is proved by such defendant.

Evading duty by unauthorised modification of computer program or data.

141. (1) Any person who, without the authority of the Controller —

(a) destroys, damages, erases or otherwise manipulates data stored in, or used in connection with, a computer;

(b) introduces into, or records or stores in, a computer by any means data for the purpose of —

(i) destroying, damaging, erasing or altering other data stored in the computer; or

(ii) interfering with, interrupting or obstructing the lawful use of, the computer or the data stored in the computer; or

(c) otherwise uses a computer,

the purpose or effect of which is to reduce, avoid or evade any liability to customs duty imposed or which would otherwise have been imposed under this Order, or to defeat any provision of this Order, shall be guilty of an offence and liable —

(i) on the first conviction, to a fine of not less than 10 times the amount of the customs duty or \$5,000, whichever is the lesser amount, and of not more than 20 times the amount of the customs duty or \$5,000, whichever is the greater amount, and where the amount of customs duty cannot be ascertained, the penalty shall be a fine not exceeding \$5,000; and

(ii) on a second or subsequent conviction, to such fine mentioned in sub-paragraph (i), imprisonment for a term not exceeding 2 years or both.

(2) In subsection (1), "data" includes any computer program or part of a computer program being a program, whether or not approved by the Controller, for use in relation to the computer service established under section 103.

Knowingly advancing or furnishing money for business comprising sale, purchase etc. of uncustomed goods.

142. Any person who knowingly advances or furnishes money for the purpose of establishing or conducting any business comprising the sale, purchase, hire, receiving, concealment, disposal or dealing of uncustomed goods shall be guilty of an offence and liable on conviction to a fine of not less than \$100,000 and not exceeding \$1,000,000, imprisonment for a term not exceeding 6 years or both.

Penalty for assaulting or obstructing officers of customs and rescuing goods.

143. Any person who —

(a) assaults or obstructs any officer of customs or other public officer or any person acting in his aid or assistance, in the execution of his duty or in the due seizing of any goods liable to seizure under this Order;

(b) fails to comply with any lawful requirement of any officer of customs or other public officer in the execution of his duty under this Order;

(c) rescues or endeavours to rescue, or causes to be rescued, any goods which have been duly seized;

(d) before or after any seizure staves, breaks or otherwise destroys any package or goods to prevent the seizure thereof or the securing of the same; or

(e) intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which such person is lawfully detained,

shall be guilty of an offence and liable on conviction —

- (i) for a first offence, to a fine not exceeding \$16,000, imprisonment for a term not exceeding 9 months or both; and
- (ii) for a second or subsequent offence, to a fine not exceeding \$40,000, imprisonment for a term not exceeding 18 months or both.

Unlawful possession etc. of customs articles and unauthorised use of customs uniform.

144. (1) Any person, not being an officer of customs, who without the permission of the Controller unlawfully wears, uses, possesses or displays any prescribed uniform or badge or authority card, or any dress having the appearance of or bearing the distinctive marks of such uniform, shall be guilty of an offence and liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding one year or both.

(2) Every officer of customs who by resignation, dismissal, discharge or otherwise leaves the Royal Customs and Excise Department shall, before leaving, deliver up in good order any accoutrement, uniform or other article supplied to

him and any other property or document belonging to the Government which may be in his possession.

(3) Any person neglecting so to deliver up such article, property or document shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 3 months or both, and in addition thereto shall be liable to pay the value of the article or property not delivered up, which value shall be ascertained in a summary manner by the same court by which the person was convicted, where it shall be recoverable as a fine.

Penalty for offering or receiving bribes and abuse of authority.

145. (1) If any officer of customs —

(a) makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any vessel or aircraft or other means of conveyance, or any goods liable to seizure;

(b) accepts, agrees to accept, or attempts to obtain, any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty;

(c) conspires or connives with any person to import or export or is in any way concerned in the importation or exportation of any goods liable to customs duty or any goods prohibited to be imported or exported for the purpose of seizing any vessel, aircraft or conveyance or any goods and obtaining any reward for such seizure or otherwise;

(d) conspires or connives with any person to do any act or thing whereby the customs revenue is or may be defrauded, or which is contrary to this Order or the proper execution of his duty;

(e) knowingly demands from any person an amount in excess of the authorised customs duty;

(f) withholds for his own use or otherwise any portion of the amount of the customs duty collected;

(g) renders a false return, whether orally or in writing, of the amount of customs duty collected or received by him;

(h) defrauds any person, embezzles any money or otherwise uses his position to deal wrongly with customs; or

(i) not being authorised under this Order to do so, collects or attempts to collect customs duty,

he shall be guilty of an offence and liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 7 years or both, and any person who gives or offers, or promises to give or procures to be given, any bribe, gratuity, recompense or reward to, or makes any collusive agreement with, any such officer or person to induce him in any way to neglect his duty or to do, conceal or connive at any act whereby any of the provisions of this Order or of any other law relating to imports or exports may be evaded, shall be guilty as an abettor and punishable under this Order accordingly.

(2) Any officer of customs who is found when on duty to have in his possession any money in contravention of any departmental regulations issued in writing shall be presumed, until the contrary is proved, to have received the same in contravention of subsection (1).

(3) If an officer of customs has reasonable suspicion that another officer of customs junior in rank to him has in his possession any money received in contravention of subsection (1), he may search such other officer.

(4) No female officer of customs shall be searched except by another female with strict regard to decency.

Penalty for offences not otherwise provided for.

146. Every omission or neglect to comply with, and every act done or attempted to be done contrary to, this Order, or any breach of the conditions and restrictions subject to or upon which any licence or permit is issued under this Order, shall be an offence against this Order and where no penalty is expressly provided, the offender guilty of any such offence shall be liable on conviction to a fine not exceeding \$16,000, imprisonment for a term not exceeding 8 months or both.

Attempts and abetment.

147. (1) Any person who attempts to commit any offence punishable under this Order, or abets the commission of any such offence, shall be guilty of that offence and liable on conviction to the penalties provided for such first-mentioned offence.

(2) Any officer of customs, whose duty it is to prevent the commission of any offence under this Order, who attempts to commit or abets the commission of, or does any act preparatory to or in furtherance of the commission of, such offence shall be guilty of that offence and liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 7 years or both.

Offences by bodies corporate etc.

148. (1) Where an offence against this Order which has been committed by a body corporate or any unincorporated body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, the director, manager, secretary or other similar officer of that body corporate or unincorporated body, or of a person purporting to act in any such capacity, he, as well as the body corporate or unincorporated body, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where a partnership is guilty of an offence against this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where an offence against this Order is committed by any person acting as an agent or servant of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person, without prejudice to the liability of the first-mentioned person, is liable under this Order in the same manner and to the same extent as if he had personally committed the offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

(4) In this section, "director", in relation to a body corporate or unincorporated body whose affairs are managed by its members, means any member of that body corporate or unincorporated body.

Rewards.

149. The Controller may order such rewards as he may think fit to be paid to any officer or other person for services rendered or expenses incurred in connection with the detection of any case of smuggling or of any offence under this Order, or in connection with any seizure made under this Order.

PART XV

GENERAL

Documents to be in approved form.

150. Every register, certificate, licence, book, instrument or other document prescribed by this Order shall be made in such form, if any, as may be approved by the Controller or as near thereto as circumstances permit.

Exemption.

151. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, exempt any person or description of persons from all or any of the provisions of this Order.

(2) Any power conferred by this Order to provide for or grant an exemption shall include the power to provide for or grant the exemption subject to conditions and to revoke the exemption.

Power to make regulations.

152. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be prescribed under this Order, and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations to provide for —

(a) the powers and duties to be exercised and performed by officers of customs;

(b) the conduct of all matters relating to the collection of customs duties, including the time of payment thereof;

(c) customs ports and legal landing places within the customs ports or at any other places for the landing and shipping of goods imported or exported, and defining the limits of such ports and landing places and prescribing the goods that may be landed or shipped thereat;

(d) places of import and export and the routes to be used for the import and export of goods by land;

(e) customs airports for the import, export and transhipment of goods by air;

(f) the conditions subject to which goods may be imported under the preferential tariff;

(g) the fees to be paid by the masters or agents of vessels or by the pilots or agents of aircraft or by the persons in charge of vehicles or by the importers or exporters of goods or their agents in respect of the services of officers of customs rendered on request beyond the ordinary hours prescribed and the conditions under which such services may be rendered;

(h) the amount to be paid as warehouse rent on goods deposited in warehouses other than the Ports Department warehouses, customs warehouses or licensed warehouses;

(i) the fees, if any, to be paid for permits and licences, other than warehouse licences;

(j) frontier areas and for regulating or prohibiting, either absolutely or conditionally, the movement of goods or persons within such areas for the purposes of this Order;

(k) prohibiting the payment of drawback upon the re-exportation of any specified goods or class of goods;

(l) specifying the goods dutiable on import in respect of which drawback may be allowed on re-export as part or ingredient of any goods manufactured in Brunei Darussalam and for fixing the rate of drawback thereon;

(m) compounding offences;

(n) defining any goods for the purposes of this Order;

(o) penalties for any contravention or failure to comply with any of the provisions of any regulation made under this section or with the restrictions or conditions of any licence or permission granted under any such regulation:

Provided that no such penalty shall exceed the penalty prescribed under section 146;

(p) any matter which requires to be prescribed under this Order;

(q) inland customs stations at which customs duties may be collected;

(r) the days and times during which any customs office, customs warehouse, licensed warehouse, inland customs station or inland clearance depot may be open for business and the times during which any goods may be landed, shipped or loaded at any customs ports or customs airport or imported or exported by land at any place of import and export;

(s) the control by officers of customs of traffic carried on in local craft or coasting vessels in the territorial or inland waters of Brunei Darussalam;

(t) the flag to be flown by vessels employed for the prevention of smuggling;

(u) the forms, if any, to be used under this Order;

(v) the deposit, custody and withdrawal of goods in and from customs warehouses and licensed warehouses and the management and control of the same;

(w) the manner in which dutiable or prohibited goods shall or shall not be packed, and for regulating or prohibiting the inclusion of dutiable or prohibited goods in the same package or receptacle with non-dutiable goods;

(x) standard containers in which dutiable goods shall be exported;

(y) the opening and examination of packages imported or exported by post for assessment of duty on dutiable goods and detection of attempts to evade the payment of customs duty;

(z) the issue of licences;

(za) the stock books to be kept by licensees and the method of keeping the same;

(zb) the method of importing, exporting, transporting or removing any goods under a licence or permit;

(zc) the manner in which goods may be transhipped, or goods in transit may be moved;

(zd) the manner in which intoxicating liquor shall be denatured in a customs warehouse or licensed warehouse;

(ze) the conditions under which any goods may be moved in transit through Brunei Darussalam;

(zf) permits and other documents to be carried by local craft or barges transporting cargo from or to vessels in a customs port;

(zg) the amount to be paid as wharf dues in respect of Government warehouses other than Ports Department warehouses;

(zh) the adoption and implementation of the provisions of Article VII of the General Agreement on Tariffs and Trade, 1994 in respect of customs valuation and matters related thereto;

(zi) the conduct of all matters relating to duty-free shops.

Appeal from decision of Controller.

153. Where it is provided in this Order that the decision on any matter rests with the Controller, except in the case of a decision made pursuant to section 46, 60, 63 or 64, any person aggrieved by such decision may within 14 days thereof appeal to the Minister whose decision shall be final.

Power of Controller to charge fees.

154. The Controller may charge such fee as he may consider reasonable in respect of any act or service done or rendered by the Royal Customs and Excise Department which is not required to be done or rendered under this Order and for which no fee is prescribed by any written law.

Transitional provisions.

155. (1) Any licence, document, endorsement, exemption or certificate prepared, made, issued or granted under the repealed Act shall, so far as it is not inconsistent with the provisions of this Order and except as otherwise expressly provided in this Order or in any other written law, continue and be deemed to have been prepared, made, issued or granted under the corresponding provisions of this Order and shall have effect accordingly.

(2) All subsidiary legislation or appointments made and any thing done under the repealed Act relating to customs and in force immediately before the commencement of this Order shall, so far as it is not inconsistent with the provisions of this Order, continue to be in force as if made or done under this Order until it is amended, revoked or repealed under this Order.

Amendment of section 3 of Chapter 36.

156. (1) Section 3 of the repealed Act is amended, in subsection (2) —

(a) by inserting "Assistant Controllers," immediately after "Deputy Controllers," in the first line;

(b) by inserting "Deputy Superintendents," immediately after "Superintendents," in the first two lines.

(2) This section shall commence immediately before the commencement of this Order.

Repeal of Chapter 36.

157. The Customs Act is hereby repealed.

13th. MARCH, 2006

Made this 4th. day of Safar, 1427 Hijriah corresponding to the 4th. day of March, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

SCHEDULE

(398/08)