



ANALYSIS

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2012, No. 5

Customs Revenue and Border Protection

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2012, No. 5

An Act to reform and modernise the laws relating to Customs controls and enforcement, provide for revenue administration and border management, trade and travel facilitation, security, and for related matters.

(20 June 2012)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, by the authority of the same, as follows:

1. Short title - This Act is the Customs Revenue and Border Protection Act 2012.
2. Commencement - (1) Except as provided in subsection (2), this Act comes into force on 1 August 2012.
 - (2) The following provisions come into force on a date to be appointed by the Queen's Representative by Order in Executive Council:
 - (a) sections 15(7), 16(2), 17(4), 21(4), 66(4), 71(4), 83(7), 95(4), 97(8), 101(3), 118(6), 121(9), 122(5), 123(4), 124(3), 125(4), 136(6), 137(4), 143(4), 144(2), 145(4), 158, 160(13), 164(5), 167(3) and (4), 168(4), 198(7), 199(3), 276, 282(3), 294(6), 298, and 299, and Part 18, and section 349:
 - (b) Part 9 and Schedule 3.
 - (3) One or more Orders in Executive Council may be made appointing different dates for different provisions or different purposes.

Part 1
Preliminary Provisions

3. Purpose - The purpose of this Act is to -
- (a) reform and modernise the law relating to Customs controls and enforcement; and
 - (b) reform and modernise the law relating to border controls and border management; and
 - (c) provide for revenue administration; and
 - (d) provide flexible, enabling, and empowering legislation that takes an integrated agency approach to border management; and
 - (e) provide for trade and travel facilitation; and
 - (f) assist legitimate traders and travellers, and apply appropriate sanctions for those who transgress the law; and
 - (g) make Customs Law clear and more easily understood; and
 - (h) comply with international conventions, instruments, protocol, or obligations; and
 - (i) provide mechanisms to enhance Customs revenue collection; and
 - (j) provide and establish a security framework; and
 - (k) provide a framework of legislative provisions to be enacted in the near future which are at present beyond the current capability and capacity of both Customs and Cook Islands importing businesses.

4. Interpretation - (1) In this Act, unless the context requires another meaning,—

“aircraft” means a machine that can derive support in the atmosphere from the reaction of the air

“Armed Forces” means the New Zealand Defence Force as defined in section 11 of the New Zealand Defence Act 1990 used either in accordance with section 9 of the New Zealand Defence Act 1990 or section 5 of the New Zealand Cook Island Constitution Act 1964

“arrival” -

- (a) in relation to a craft, includes the arrival of the craft, whether lawfully or unlawfully, in the Cook Islands from a point outside the Cook Islands whether or not the craft lands at, hovers above, berths, moors, anchors, or stops at, or otherwise arrives at any place within the Cook Islands; and
- (b) in relation to a person, means the entry of the person by any means, whether lawfully or unlawfully, into the Cook Islands from a point outside the Cook Islands; and “arriving” and “arrived” have corresponding meanings

“authorised person” means a person authorised under section 8

“beer” means the product of alcoholic fermentation by yeast of liquid derived from a mash of drinking water and malt grains with hops or their extract

“boat” means a vessel other than a ship

“compounding” means the manufacture of spirituous liquor (other than perfume, culinary essences, or medicinal or toilet preparations) by imparting a flavour to, or mixing a material or ingredient with, spirits by a method of which the process of distillation is part; and “to compound” and “compounder” have corresponding meanings

“Comptroller”, “Comptroller of Customs”, and “Collector of Customs” means the person holding office in accordance with section 7(3) or appointed in accordance with section 7(2) as Comptroller of the Cook Islands Customs Service

“contractor” means a person who does work for valuable consideration on or in respect of any goods at the request of any person (otherwise than as an employee of that other person) in circumstances where that other person supplies, but retains ownership of, some or all of the material used in the work

“Cook Islands”

- (a) means the land and the waters enclosed by the outer limits of the territorial sea of the Cook Islands (as provided for in Sections 3 of the Territorial Sea and Exclusive Economic Zone Act 1977); and
- (b) includes the contiguous zone of the Cook Islands (as described in section 7A of the Territorial Sea and Exclusive Economic Zone Act 1977) in—
 - (i) sections 26(1) and (4); and
 - (ii) sections 25(1)(c) and (d), 31(1), 172(1) and (2), 173(1), 176(1), and 187(a) and (b) in relation to a craft that is a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water; and
 - (iii) sections 187(a) and (b) and 189(2), in relation to a person who has entered into or has arrived in or is about to depart from the Cook Islands in a craft that is a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water; and
 - (iv) sections 209 and 287(2), in relation to goods found on a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water

“Cook Islands Customs Service” means the division of the Ministry of Finance and Economic Management called the Revenue Management Division which contains the Cook Islands Customs Service established by section 7

“craft” includes any aircraft, ship, boat or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water

“Customs” means the Cook Islands Customs Service

“Customs airport” means an aerodrome designated as a Customs airport under section 12

“Customs Appeal Authority” or “Authority” means the authority established under section 312

“Customs-approved secure exports scheme” means, in relation to goods that are to be exported (whether under drawback or not), a scheme approved by the Comptroller under section 83—

- (a) for the packing of the goods, in a Customs approved secure package, by approved persons, in approved conditions, and subject to approved requirements (including, without limitation, a requirement that a seal or markings in an approved form be applied to the package, as soon as it is secured—
 - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (ii) to help to identify interference or tampering with the package after it is secured); and
- (b) for the immediate conveyance (on the completion of the packing of the goods in that way) of Customs approved secure package, by approved persons and in an approved manner, to the place of shipment for shipping, or if it is not in that way immediately conveyed and shipped, to some approved place or places of security en route to the place of shipment; and
- (c) for the goods from the time when they are first secured in a Customs approved secure package until the exportation of the goods to a point outside the Cook Islands, to be goods, subject to the control of Customs; and
- (d) for the powers of detention and search in section 177 to be available in respect of a vehicle in the Cook Islands if there are suspected to be in or on the vehicle goods that are, or are suspected to be,—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package; and
- (e) for a Customs officer to be empowered, under section 180(2), to question 1 or more of the following persons about any cargo destined to be exported from the Cook Islands—
 - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of Customs and in a Customs approved secure package:
 - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of Customs and in a Customs-approved secure package:

- (iii) a person employed by a person described in subparagraph (i) or (ii);
and
- (f) for the powers in section 193 (which include powers of examination) to be available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package

“Customs-approved secure package” means a package of a kind that is approved by the Comptroller under section 83 for the purposes of a Customs-approved secure exports scheme

“Customs controlled area” means an area that is required, for one or more of the purposes described in section 13, to be licensed and that is so licensed

“Customs direction” means a lawful request, order, command, or instruction (whether in writing or verbal) given by a Customs officer (or an authorised person) to any person to do or to refrain from doing an act or to submit to a procedure for the purposes of this Act; and includes any notice, poster or sign publicly displayed in a Customs place or Customs controlled area; and includes a direction contained in a form prescribed under this Act

“Customs officer” or “officer” means a person appointed by the Comptroller as a Customs officer for the purpose of this Act, or a person authorised by the Comptroller under section 8, or any other person who is declared by the Comptroller to be a Customs officer for the purpose of this Act, whether at the time of appointment or otherwise

“Customs place” means a Customs port or Customs airport designated under section 12

“Customs port” means a port of entry designated as a Customs port under section 12

“Customs revenue” or “revenue of Customs” means revenue managed by Customs on behalf of the Crown

“Customs seal”, in relation to a package of goods to be exported, means a seal approved by the Comptroller for use in relation to the package, as soon as it is secured (and in accordance with a notice under section 81), to fulfill either or both of the following purposes:

- (a) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
- (b) to help to identify interference or tampering with the package after it is secured

“Customs value” or “value”, in relation to goods, means Customs value of those goods determined in accordance with the Schedule 2

“dangerous item” means—

- (a) any firearm as defined in section 2 of the Cook Islands Arms Ordinance 1954; and
- (b) any dangerous or offensive weapon or instrument of any kind whatever; or
- (c) any ammunition; or
- (d) any explosive substance or device or any other injurious substance or device of any kind whatever that could be used to endanger a person's safety

“departure hall” means a place licensed under section 15 for the processing of persons departing from the Cook Islands

“document” means—

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

“domestic cargo” means goods that, having been brought within a Customs controlled area at one Customs place for carriage by air or sea to any other Customs place in the Cook Islands on either—

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

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

“domestic passenger” means a passenger, not being an internationally ticketed passenger, who has an entitlement to air or sea travel for a domestic sector on either—

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

“domestic sector” means a journey from one Customs place to another within the Cook Islands

“dutiable goods” means goods of a kind subject to duty within the meaning of this Act

“duty” means a duty, additional duty, tax, fee, charge, or levy imposed on goods by any of the provisions of this Act, and includes—

- (a) excise duty and excise-equivalent duty imposed under Part 9;
- (b) a duty imposed under the Tariff Act 2012;
- (c) a duty or tax imposed under section 10 of the Value Added Tax Act 1997

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

“excisable goods” means goods on which excise duty is payable in accordance with this Act

“Excise Order” means the applicable Order in Council made under section 113

“exportation”,—

- (a) except where otherwise expressly provided, means any shipment in any craft for transportation to a point outside the Cook Islands; and
- (b) in relation to an electronic publication referred to in section 91 or regulations made under section 91, includes the sending of the electronic publication from the Cook Islands by any means (other than by broadcasting) to a point outside the Cook Islands; and
- (c) “to export” and “exported” have corresponding meanings

“exporter” means a person by or for whom goods are exported; and includes a person who is or becomes the owner of or entitled to the possession of or is

beneficially interested in goods on or at any time after entry for export and before they are exported

“export warehouse” means a place licensed under section 15 for the purpose described in section 13(b)

“forfeited goods” means goods that are forfeited to the Crown under section 286

“goods” means all kinds of movable personal property, including animals

“goods subject to the control of Customs” has the meaning given to that term by section 23

“Government” means the Executive Government of the Cook Islands established by Part II of the Constitution

“Head of Department” means the person appointed under section 14 of the Public Service Act 2009

“High Court” means the High Court of the Cook Islands

“importation”—

- (a) in relation to any goods, means the arrival of the goods in the Cook Islands in any manner, whether lawfully or unlawfully, from a point outside the Cook Islands; and
- (b) in relation to an electronic publication referred to in section 90 or regulations made under section 90, includes the arrival of the electronic publication in the Cook Islands by transmission by any means (other than by broadcasting) from a point outside the Cook Islands

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

“international cargo” means any cargo that has arrived from a point outside the Cook Islands or is destined to be exported from the Cook Islands

“international crew” means the crew or any member of the crew of a craft that is on a journey that—

- (a) began outside the Cook Islands; or
- (b) began in the Cook Islands and is to continue outside the Cook Islands

“international passenger” means a person who has entitlement to travel on a craft within the Cook Islands where that travel is part of an international journey that—

- (a) began outside the Cook Islands; or
- (b) began in the Cook Islands and is to continue outside the Cook Islands

“internationally ticketed passenger” means a person who has an entitlement to air or sea travel for a domestic sector, being a sector included in tickets for an international journey that—

- (a) began outside the Cook Islands; or
- (b) began in the Cook Islands and is to continue outside the Cook Islands

“Judge” means a Judge of the High Court of the Cook Islands

“manufacture”, in relation to goods specified in the Excise Order, means,—

- (a) if the goods are tobacco, the process of cutting, pressing, grinding, crushing or rubbing raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty paid tobacco, and of putting up for use or consumption scraps, waste, chippings, stems or deposits of tobacco resulting from processing tobacco;
- (b) if the goods are a fuel, any operation or process, involved in the production of the goods;
- (c) if the goods are neither tobacco, nor a fuel—
 - (i) any operation or process involved in the production of the goods; and
 - (ii) any ancillary process (as defined in subsection (2)) that takes place on premises that are not licensed, or required to be licensed under the Sale of Liquor Act 1991-92

“manufactured tobacco” means tobacco that has been manufactured or prepared for smoking or any other purpose

“manufacturing area” means a place licensed under section 15 for the purpose described in section 13(a)

“Member of the Police” means any person appointed under the Police Act 1981

“Minister” means the Minister responsible for the Cook Islands Customs Service

“Ministry of Finance and Economic Management” means the Ministry established by the Ministry of Finance and Economic Management Act 1995-1996

“objectionable” in relation to publications means a publication that describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is

likely to be injurious to the public good and includes any publication that promotes or supports, or tends to promote or support,—

- (a) the exploitation of children, or young persons, or both, for sexual purposes; or
- (b) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
- (c) sexual conduct with or upon the body of a dead person; or
- (d) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
- (e) bestiality; or
- (f) acts of torture or the infliction of extreme violence or extreme cruelty

“occupier”, in relation to land, means the owner; and includes a lessee or tenant, a licensee, or a person who has the right to occupy land under other authority

“operator” in relation to a business, means the person actively engaged, whether alone or with others, in the carrying on of the business, and whether registered as such; and, in the case of a body corporate, includes every director, manager, secretary, or other similar officer engaged in the direct control or management of its business, and a person who purports to act in any of those capacities

“overseas company” means any company other than one incorporated in the Cook Islands

“overseas register” means the register of companies that are incorporated outside the Cook Islands, which is kept under the Companies Act 1970-1971

“owner” —

- (a) in relation to a craft, includes the owner or charterer of the craft, and a person acting as agent for the owner or charterer; and
- (b) in relation to goods, includes the importer or a person having possession of or who is beneficially interested in the goods; and
- (c) in relation to land, means the person entitled to receive rent for the land, or who would be so entitled if the land were let to a tenant for any rent

“package” includes any means used or capable of being used to pack, cover, enclose, contain or encase goods for carriage, a bulk cargo container, a pallet or a similar device

“prescribed” means,—

- (a) in respect of the matters described in section 359, prescribed by the Comptroller; and
- (b) in respect of all other matters, prescribed by regulations made under this Act

“prohibited exports” means goods or electronic publications the exportation of which is prohibited, whether conditionally or unconditionally, by or under section 91

“prohibited goods” means prohibited exports or prohibited imports

“prohibited imports” means goods or electronic publications the importation of which is prohibited, whether conditionally or unconditionally, by or under section 90

“publication” means—

- (a) any film, book, sound recording, picture, newspaper, photograph, photographic negative, photographic plate, or photographic slide;
- (b) any print or writing;
- (c) a paper or other thing that has printed or impressed upon it, or otherwise shown upon it, 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words;
- (d) a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words

“public notice” means—

- (a) a notice published in any form of media including radio, television, and newspaper; and
- (b) if a notice is published on an Internet site to which the public have free access, includes that notice

“Public Service” has the meaning given to that term by section 23 of the Public Service Act 2009

“rectifying” in relation to spirits, meaning purifying by a process of redistillation

“Response Executive” means the Response Executive established by section 11 of the Disaster Risk Management Act 2007

“securities” means the security for the payment of duty that is payable under the provisions of this Act, including any additional costs incurred by Customs in administering such security

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

“shipment” includes loading into a craft; and “to ship” and cognate expressions have corresponding meanings

“spirits” means ethyl alcohol, whether denatured or not, and includes spirituous beverages, including brandy, gin, rum, vodka, whisky, and every description of spirituous liquor derived from ethyl alcohol

“Crown” means the Government of the Cook Islands

“tobacco” includes cigars, cigarettes, and snuff

“uncustomed goods” means goods on which duty has become due and payable but is unpaid

“unlawfully exported” means exported in breach of this Act or any other enactment

“unlawfully imported” means imported in breach of this Act or any other enactment

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

“working day” means a day of the week other than Saturday, Sunday, and the days stipulated as public holidays under the Public Holidays Act 1999.

(2) For the purposes of paragraph (c)(ii) of the definition of manufacture in subsection (1), the term “ancillary process”, in relation to the manufacture of goods specified for the purpose of this subsection in the Excise Order that are neither a tobacco nor a fuel means any 1 or more of the following processes:

- (a) filtering the goods, diluting the goods, or blending the goods with other goods (whether the other goods are the same as, similar to, or different from, the goods);
- (b) putting the goods for the first time into a container (for example, a bag, barrel, bottle, can, cask, drum, or keg) in which they might be presented, or from which they might be dispensed, for sale to the public or any member of the public;
- (c) labelling or marking, for the first time, containers filled with the goods.

5. Act binds the Crown - Except as provided in section 6, this Act binds the Crown, including every Government department, statutory authority and statutory corporation, and every person in the employment of the Government.

6. Application of the Act in certain cases - (1) The circumstances in which and the conditions on which the powers conferred by Part 14 may be exercised in relation to—

- (a) A member of the Armed Forces; or
- (b) A craft under the control of the Armed Forces—

must be prescribed by regulations, and those powers may only be exercised in the circumstances and on the conditions so prescribed.

(2) For the purposes of subsection (1), the Queen’s Representative, by Order in

Executive Council, must make regulations prescribing the circumstances in which and the conditions on which the powers conferred by Part 14 may be exercised in relation to—

- (a) a member of the Armed Forces; or
 - (b) a craft under the control of the Armed Forces.
- (3) Subject to subsection (6), sections 33 to 43 do not apply to any member of the Armed Forces or any craft under the control of the Armed Forces during such time as that person or craft is required to respond to an emergency.
- (4) For the purposes of this section, “emergency” means—
- (a) an emergency due to an actual or imminent attack on the Cook Islands by an enemy, or to any actual or imminent warlike act whether directed against the Cook Islands or not, if loss of life or injury or distress to persons or danger to the safety of the public is caused or threatened to be caused in the Cook Islands or in any part of the Cook Islands; or
 - (b) an actual event, or a high probable risk, involving serious disruption to the functioning of a community causing widespread human, material, economic or environmental loss and which it exceeds the ability of the affected community to cope using its own resources (as a “disaster” defined in section 3 of the Disaster Risk Management Act 2007); or
 - (c) an actual or imminent event that endangers or threatens life, property or the environment and which requires a significant coordinated response (as defined as an “emergency” in section 3 of the Disaster Risk Management Act 2007); or
 - (d) such other circumstances as are agreed by Cabinet.
- (5) Subject to subsection (6), sections 24 to 32 do not apply to any member of the Armed Forces or any craft under the control of the Armed Forces during such time as that person or craft is involved in an emergency described in subsection (4).
- (6) Where a craft under the control of the Armed Forces that is involved in, or is required to respond to, an emergency departs from or returns to the Cook Islands, the Armed Forces must, within a period of 48 hours or such longer period as the Comptroller may reasonably determine, notify the Customs that the craft has departed from or arrived in the Cook Islands, as the case may be, and provide to the Customs such details relating to goods and persons on the craft as the Comptroller specifies.
- (7) The power of the Comptroller under subsection (6) to determine a time or specify details required may be exercised generally or in respect of any particular case.
- (8) Nothing in this Act or in any regulations made under this Act may be interpreted as limiting the immunities of—
- (a) any foreign warship or other foreign governmental ship operated for non-commercial purposes; or
 - (b) any foreign military aircraft; or
 - (c) members of the crew of any ship or aircraft to which paragraph (a) or paragraph (b) of this subsection applies.
- (9) Sections 24 to 35 do not apply to any craft under the direction of the Response Executive responding to a disaster or emergency as those terms are defined in the Disaster Management Act 2007.

Part 2
Administration

7. Cook Islands Customs Service - (1) There is established a Division of the Ministry of Finance and Economic Management called the Revenue Management Division which must contain the Cook Islands Customs Service (formerly known as the Customs Department).

(2) The Minister may from time to time appoint a Comptroller of the Cook Islands Customs Service and this person must—

- (a) be known as the Comptroller of Customs; and
- (b) by virtue of his or her office, be a Customs officer for purposes of this Act.

(3) The person holding the position of Comptroller of the Customs Department immediately prior to the enactment of this Act is deemed to be the Comptroller of the Cook Islands Customs Service in accordance with the transitional provisions of this Act and holds that position in accordance with the employment provisions of the Public Service Act 2009.

(4) The Comptroller may from time to time appoint Customs officers for the purposes of this Act.

(5) All officers holding position of Custom officer immediately prior to the enactment of this Act are deemed to be Customs officers of the Cook Islands Customs Services in accordance with the transitional provisions of this Act.

8. Authorised persons - (1) The Comptroller may authorise any suitably qualified and trained person who is not a Customs officer to perform or exercise any function or power that may be performed or exercised by a Customs officer under this Act.

(2) The authorisation under subsection (1) must be in writing (including any writing in electronic form) and must specify—

- (a) the function or power that may be performed or exercised by the authorised person; and
- (b) the term of the authorisation, which must be such period, not exceeding 3 years, as the Comptroller thinks fits.

(3) The Comptroller may from time to time renew any authorisation given under this section for such further period, not exceeding 3 years, as the Comptroller thinks fit.

(4) A person who is authorised under this section must for the purposes of this Act be treated as a Customs officer when performing or exercising a function or power in accordance with that person's authorisation.

(5) The Comptroller may revoke an authorisation given under this section for incapacity, neglect of duty, or misconduct, or where the authorised person gives written notice to the Comptroller that he or she wishes the authorisation to be revoked, or in any other circumstance where, in the opinion of the Comptroller, the authorisation is no longer necessary.

(6) Where a person ceases to be an authorised person under this section, that person must surrender to the Comptroller all articles and documents received by him or her in relation to the authorisation.

9. Delegation by the Comptroller - (1) The Comptroller may from time to time, either generally or particularly, delegate to any person 1 or more of the Comptroller's functions or powers under this Act or regulations made under this Act.

(2) Where the Comptroller has, under subsection (1), delegated any functions or powers to any person, that person may, with the prior approval in writing of the Comptroller, delegate such of those functions or powers as the Comptroller approves to any other person.

(3) Subject to any general or special directions given or conditions imposed by the Comptroller, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(4) A delegation—

- (a) must be in writing; and
- (b) must be given for a specified period but in any event is revocable at will; and
- (c) does not affect or prevent the exercise of any function or power by the Comptroller; and
- (d) does not affect the responsibility of the Comptroller for the actions of any person acting under the delegation.

10. Identity cards - (1) The Comptroller must issue an identity card or other means of identification to each Customs officer and any authorised person other than a member of the Police.

(2) Whenever a Customs officer or authorised person exercises any power under this Act, he or she must, on request, produce the identity card or other means of identification for inspection.

(3) A person who ceases to be a Customs officer or authorised person must, as soon as possible, return the identity card or other means of identification to the Comptroller.

11. Customs flag - The Customs flag must be the Cook Islands (flag) with the addition in the fly of the words "Cook Islands Customs Service" in bold characters.

Part 3

Customs Places and Customs Controlled Areas

Customs places

12. Customs places - (1) For the purposes of this Act, the Comptroller may by public notice and subject to such conditions or restrictions as the Comptroller may determine, designate as a Customs port or as a Customs airport, any port or airport specified in the notice, and such Customs port and Customs airports must be known collectively as "Customs places".

(2) The Comptroller may in like manner vary or revoke a designation under this section or vary or revoke the conditions or restrictions to which it was subject or revoke those conditions or restrictions and impose new conditions or restrictions.

(3) The Comptroller must consult the Secretary of the Ministry of Transport, the Principal Immigration Officer, and the Secretary of the Ministry of Agriculture before exercising the powers conferred by this section.

Customs controlled areas

13. Customs controlled areas - Subject to such exemptions as may be prescribed and to section 15(4), no area may be used for—

- (a) the manufacture of goods specified for the purpose of this paragraph in the Excise Order; or
- (b) the deposit, keeping, or securing of imported or excisable goods without payment of duty on the goods, pending the export of those goods; or
- (c) the temporary holding of imported goods for the purposes of the examination of those goods under section 193 (including the holding of the goods while they are awaiting examination); or
- (d) the disembarkation, embarkation, or processing of persons arriving in or departing from the Cook Islands; or
- (e) the processing of craft arriving in or departing from the Cook Islands or the loading or unloading of goods onto or from such craft; or
- (f) any other prescribed purpose,—
unless that area is licensed as a Customs controlled area.

14. Application for licence - (1) An application for an area to be licensed as a Customs controlled area may be made by the owner or occupier of, or person operating in, the area and must be made in such form and must contain such particulars as may be prescribed.

(2) The Comptroller may, at any time, request further information from an applicant if the Comptroller considers that the information is relevant to the application.

(3) An applicant may, at any time before the Comptroller makes a decision on the application, advise the Comptroller of any variations that the applicant wishes to make to the application.

15. Grant or refusal of licence - (1) On receipt of—

- (a) an application for a licence; and
- (b) any information requested by the Comptroller under section 14(2); and
- (c) any variations to the application made under section 14(3),—

the Comptroller may grant a licence for the area, or may refuse the application.

(2) A licence granted under subsection (1) may be granted subject to—

- (a) such terms, conditions, or restrictions as the Comptroller thinks fit; and
- (b) the payment by the licensee of the prescribed annual licence fee (if any).

(3) The licence must—

- (a) specify the area in respect of which it is granted; and
- (b) specify the applicant as the licensee; and
- (c) specify the purpose or purposes described in paragraphs (a) to (f) of section 13 for which the area is licensed.

(4) Where, on an application for an area to be licensed as a Customs controlled area, the Comptroller is of the opinion that—

- (a) it is not in the public interest; and
- (b) it is impracticable or unnecessary—

that the area should be licensed as a Customs controlled area, the Comptroller may, in his or her discretion, and under such conditions as the Comptroller thinks fit, direct that the area need not be licensed as a Customs controlled area.

(5) A direction given under subsection (4) may be given in respect of the whole or any specified part of the business carried on in the area, and must exempt the area from such provisions of this Act as may be specified in the direction.

(6) The applicant must be advised by notice in writing of any decision or direction of the Comptroller under this section.

(7) An applicant who is dissatisfied with a decision or direction of the Comptroller under this section may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.

16. Variation or revocation of conditions - (1) The Comptroller may, by notice in writing, vary or revoke the terms, conditions, or restrictions to which the licence is subject or revoke those terms, conditions, or restrictions and impose new terms, conditions, or restrictions.

(2) A licensee who is dissatisfied with a decision of the Comptroller under this section may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.

17. Revocation or suspension of licence - (1) A licence issued under section 15 may, at any time, be revoked or suspended by the Comptroller where—

- (a) a term, condition, or restriction specified in the licence has been contravened; or
- (b) the area in respect of which the licence was granted ceases to be used for any of the purposes described in paragraphs (a) to (f) of section 13 for which the area is licensed; or
- (c) the licensee ceases to be the owner or occupier of, or operator in, the area in respect of which the licence was granted; or
- (d) the Comptroller considers that the licensee is no longer a fit and proper person to hold a licence; or
- (e) the prescribed annual fee (if any) is due and has not been paid.

(2) Notice in writing of the Comptroller's intention to revoke or suspend a licence must be given to the licensee unless the Comptroller considers that there is good reason not to give such a notice.

(3) Where the Comptroller revokes or suspends a licence under subsection (1), the Comptroller must notify the licensee in writing of the revocation or suspension.

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

18. Surrender of licence - A licence for a Customs controlled area may be surrendered at any time by the licensee by the giving of 1 months' notice in writing to the Comptroller.

19. Closing of Customs controlled area - Where any licence issued under section 15 is suspended, revoked, or surrendered, duty becomes due and payable on all goods within that area that are or were subject to the control of Customs, immediately prior to the suspension, revocation, or surrender, unless the Comptroller permits the goods to be removed to another Customs controlled area or to be exported.

20. Liabilities not affected by ceasing to act as licensee - The obligations and liabilities under this Act of a licensee in respect of anything done or omitted to be done by the licensee while licensed are not affected by the fact that the licensee ceases to act as such nor by the fact that the licence is surrendered or suspended or revoked.

21. Customs facilities in Customs controlled areas - (1) The licensee of any Customs controlled area licensed under this Act must, without any charge to Customs, provide and maintain such operating areas, accommodation, facilities, buildings, equipment, and storage as the Comptroller determines are reasonably necessary and suitable for the carrying out of the functions and responsibilities of Customs, including any operating area in a Customs controlled area where that operating area is used for—

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

(2) The licensee of every Customs controlled area must store goods subject to the control of Customs in such manner and in such location as the Comptroller may direct.

(3) The licensee must be advised by notice in writing of any determination of the Comptroller under subsection (1) or any direction of the Comptroller under subsection (2).

(4) A licensee who is dissatisfied with a determination by the Comptroller under subsection (1) or a direction by the Comptroller under subsection (2) may, within 20 working days after the date on which notice of the determination or direction is given, appeal to a Customs Appeal Authority against that determination or direction.

22. Storage charges - In such circumstances and for such period of time as may be prescribed, no charges may be made by a licensee of a Customs controlled area for the reception or storage in that area of any imported goods.

Part 4

Arrival and Departure of Goods, Persons and Craft

23. Goods subject to control of Customs - (1) Goods are subject to the control of Customs,—

- (a) where the goods have been imported, from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area; or
- (b) where the goods are lawfully removed from a Customs controlled area under a conditional permit granted under section 71(1)(c), until such time as the Comptroller is satisfied that the conditions of the permit have been met; or

- (c) where the goods are to be exported (whether under drawback or not) and are in a package in relation to which a Customs seal has been used, from the time when the Customs seal is first used until the exportation of the goods to a point outside the Cook Islands; or
- (d) where the goods are to be exported (whether under drawback or not) under a Customs-approved secure exports scheme, from the time when the goods are first secured in a Customs-approved secure package until the exportation of the goods to a point outside the Cook Islands; or
- (e) where the goods are to be exported under drawback, from whichever is the earlier of the following times until the exportation of the goods to a point outside the Cook Islands:
 - (i) the time of the claim for the drawback; or
 - (ii) the time when the goods are brought to a Customs controlled area (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation); or
- (f) where the goods are to be exported otherwise than under drawback, from the time when the goods are brought to a Customs controlled area for export, until their exportation to a point outside the Cook Islands; or
- (g) where the goods are on board any craft described in section 172(1), at all times that the craft is within the Cook Islands;
- (h) where the goods are manufactured in a Customs controlled area, from the time of manufacture until the goods are lawfully removed for home consumption from a Customs controlled area, or the goods are exported to a point outside the Cook Islands, whichever happens first; or
- (i) where the goods are owned by or in the possession of an internationally ticketed passenger, or an international crew member who is using air or sea travel for a domestic sector or a domestic passenger who is using air or sea travel for a domestic sector, the goods are—
 - (i) brought into a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from the Cook Islands;
 - (ii) accepted by carriage by an airline or shipping company—until the time when, at the end of the domestic sector, the goods are lawfully removed from a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from the Cook Islands.
- (j) in the case of domestic cargo (not being goods to which paragraph (i) of this subsection applies); from the time when the goods are brought within a Customs controlled area that is in a Customs place until the time when the goods are lawfully removed from that or any other Customs controlled area.

(2) For the purposes of subsection (1), goods that are removed from a Customs controlled area to another Customs controlled area are not removed for home consumption.

24. Advice of arrival, etc - (1) The person in charge of a craft that is en route to the Cook Islands from a point outside the Cook Islands must, unless otherwise approved by the Comptroller,—

- (a) give to Customs, in such form and manner (for example, in an electronic form and manner) as may be approved in writing by the Comptroller (either generally or for particular case or class of case) such advance notice as may be prescribed of 1 or more of the following matters:
 - (i) the impending arrival of the craft:
 - (ii) its voyage:
 - (iii) its passengers:
 - (iv) its crew:
 - (v) its cargo for discharge within the Cook Islands (whether commercial or non-commercial):
 - (vi) its commercial cargo not intended for discharge within the Cook Islands:
 - (vii) the Customs place at which the craft will arrive; and
- (b) on arriving within the Cook Islands, proceed directly to that Customs place, unless directed elsewhere by a Customs officer.

(2) The owner or operator of the craft referred to in subsection (1), or an agent of the owner or operator, may provide the information referred to in paragraph (a) of that subsection to Customs on behalf of the person in charge of the craft.

25. Requirement to answer questions - (1) This section applies to—

- (a) a craft that has arrived in the Cook Islands from a point outside the Cook Islands:
- (b) a craft departing from the Cook Islands for a point outside the Cook Islands:
- (c) a craft that is within the Cook Islands and that is carrying international cargo or international crew or any international passenger, whether or not the craft is also carrying domestic cargo:
- (d) any other craft that is within the Cook Islands and that a Customs officer has reasonable cause to suspect has been, or is about to be, involved in the commission of an offence against this Act or the importation or exportation of any dutiable, uncustomed, prohibited, or forfeited goods.

(2) The person in charge of, the owner of, any member of the crew of, and any passenger on a craft to which this section applies must—

- (a) answer any question asked by a Customs officer relating to the craft and its voyage and any persons or goods that are or have been carried by the craft; and
 - (b) immediately, at the request of any Customs officer, produce any documents within that person's possession or control relating to any of those matters.
- (3) A person referred to in section 179(1) must—
- (a) answer any questions asked by a Customs officer under section 179; and
 - (b) produce any documents within his or her possession or control that a Customs officer demands under section 182.

26. Bringing-to of ship - (1) The master or the person in charge of a ship arriving within the Cook Islands must, on being directed by a Customs officer to do so,—

- (a) stop and bring the ship to for boarding; and
- (b) ensure that the ship remains stopped until a Customs officer directs that the ship may proceed.

(2) The craft carrying the Customs officer or officers must identify itself as being a craft in the service of the Crown.

(3) The master of the ship or the person in charge must by all reasonable means facilitate the boarding of the ship by Customs officers.

(4) The master of a ship within the Cook Islands must, if so directed by any Customs officer acting with the authority of the Comptroller, cause that ship to leave the Cook Islands immediately.

(5) A Customs officer who proposes to give a direction under subsection (4) must consult with the Comptroller or a person authorised by the Comptroller.

27. Craft to arrive at nominated Customs place - (1) Subject to sections 24 and 28, the person in charge of a craft—

- (a) that arrives within the Cook Islands on a journey from a point outside the Cook Islands;
- (b) that is carrying—
 - (i) persons brought in that craft or any other craft from a point outside the Cook Islands; or
 - (ii) goods subject to the control of Customs brought in that craft or any other craft from a point outside the Cook Islands—

must ensure that the craft lands, anchors, or otherwise arrives only at a Customs place, which, in the case of a craft to which section 24 applies, must be the Customs place nominated by that person in accordance with that section.

(2) On arrival at the nominated Customs place or Customs controlled area within that place, and until an inward report in accordance with section 29 has been made, no person may leave or board the craft unless authorised to do so by a Customs officer.

28. Craft arriving at place other than nominated Customs place - (1) Nothing in section 27 applies to a craft—

- (a) that is required or compelled to berth, land, anchor, or otherwise arrive at a place other than a Customs place nominated in accordance with section 24(1)(a), if this arrival—
 - (i) is required by any statutory or other requirement relating to navigation; or
 - (ii) is compelled by accident, stress of weather, or other necessity; or
- (b) that is authorised by the Comptroller to berth, land, anchor, or otherwise arrive at a place other than a Customs place.

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

(3) The Comptroller may not grant any authorisation under subsection (1)(b) without consulting the Head of Department of—

- (a) the Ministry of Agriculture; and

- (b) the Ministry of Foreign Affairs and Immigration; and
 - (c) the Ministry of Health; and
 - (d) the Cook Islands Police; and
 - (e) if the proposed authorisation relates to an aircraft, the Airport Authority; and
 - (f) if the proposed authorisation relates to a ship, the Ministry of Transport; and
 - (g) every other Department whose operations may, in the Comptroller's opinion, be affected by the granting of an authorisation under subsection (1)(b).
- (4) If any craft berths, lands, anchors, or otherwise arrives at a place other than a Customs place by reason of an authorisation under subsection (1)(b),—
- (a) the same powers may be exercised under this Act in relation to that craft as if it had arrived at a Customs Place in accordance with Part 4, and the same obligations apply; and
 - (b) the same powers may be exercised under this Act in relation to persons and goods on that craft as if those persons or goods were in a Customs controlled area, following arrival of the craft in accordance with Part 4, and the same obligations apply.
- (5) The person in charge of the craft—
- (a) must immediately report to a Customs officer or to a member of the police; and
 - (b) must not, without the consent of a Customs officer, permit any goods carried in the craft to be unloaded from it or any of the crew or passengers to depart from its vicinity; and
 - (c) must comply with any directions given by a Customs officer in respect of any goods, crew or passengers carried in the craft.
- (6) Subject to section 67(a), no member of the crew and no passenger on the craft may without consent of a Customs officer—
- (a) unload goods from the craft; or
 - (b) depart from the vicinity of the craft,—
 - (i) and all such persons must comply with any directions given by a Customs officer.
- (7) Where a craft is directed by a Customs officer under section 24(1)(b) to arrive at a place other than the Customs place nominated in accordance with section 24(1)(a), no person may depart from or board the craft unless authorised to do so by a Customs officer.
29. Inward report - (1) Unless otherwise approved by the Comptroller, this section applies to a craft—
- (a) that arrives within the Cook Islands on a journey from a point outside the Cook Islands; or
 - (b) that is carrying—
 - (i) persons; or
 - (ii) goods subject to the control of Customs—
 brought in that craft or any other craft from a point outside the Cook Islands.
- (2) On the arrival at a Customs place of craft to which this section applies, the person in charge or the owner of the craft, as the case may be, must—

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

(3) The particulars and supporting documents referred to in subsection (2)(a) need not include information that has already been supplied to Customs in any form and manner approved in writing by the Comptroller under section 24(1)(a) or otherwise.

Arrival of persons

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

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

31. Disembarkation - (1) Subject to such exemptions as may be prescribed, a person who is on board a craft that has arrived in the Cook Islands from a point outside the Cook Islands must comply with any Customs direction concerning disembarkation.

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

(3) Subject to such exemptions as may be prescribed, every person who has disembarked from a craft to which this section applies must, unless otherwise directed by Customs,—

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

32. Baggage to be presented - (1) Subject to such exemptions as may be prescribed, every person who disembarks from a craft that has arrived in the Cook Islands from a point outside the Cook Islands or a craft that is at the end of a domestic sector must—

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

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

Departure of persons

33. Persons departing from the Cook Islands to depart from Customs place - Subject to section 43 and to such exemptions as may be prescribed or unless otherwise authorised by Customs, a person must not depart from the Cook Islands unless he or she departs from a Customs place.

34. Embarkation - A person preparing to board a craft for departure from the Cook Islands must comply with any Customs direction given to the person concerning embarkation.

35. Outgoing baggage to be presented - (1) Subject to such exemptions as may be prescribed, every person who arrives at a Customs place or a Customs controlled area for embarkation on to a craft that has, as its destination, a point outside the Cook Islands must—

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

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

Further requirements relating to persons arriving in or departing from the Cook Islands

36. Use of electronic communication devices prohibited in certain place - (1) This section applies to any Customs place or Customs controlled area that is used by persons arriving in or departing from the Cook Islands.

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

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

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

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

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

37. Completion of processing under Entry, Residence and Departure Act 1971-72 and Biosecurity Act 2008 - (1) This section applies to a person in a designated place who has arrived in the Cook Islands or who departs, or attempts to depart, from the Cook Islands.

(2) The person must remain in the designated place until the processing, under the (Entry, Residence and Departure Act 1971-72 and, if applicable, the Biosecurity Act 2008, in respect of that person's arrival in, or departure from, the Cook Islands, is completed.

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

(4) For the purpose of subsection (2), the processing referred to in that subsection is completed when—

- (a) the person has complied with all obligations imposed on the person, in respect of that person's arrival in, or departure from, the Cook Islands, under the Entry Residence and Departure Act 1971-72 and, if applicable, the Biosecurity Act 2008; and
- (b) the powers and duties under those Acts that are, in relation to the person, required to be exercised or performed in the designated place have, so far as practicable, been exercised or performed in that place.

(5) In this section—

“authorised officer” means an officer authorised under the Entry, Residence and Departure Act 1971-72 or the Biosecurity Act 2008

“designated place” means—

- (a) a Customs controlled area; or
- (b) a Customs place; or
- (c) a place approved by the Comptroller for the purposes of—
 - (i) the arrival of a craft in the Cook Islands; or
 - (ii) the departure of a craft from the Cook Islands; or
- (d) a Police station to which a person reports under section 30(1);

“processing” includes—

- (a) consideration by any authorised officer as to the applicability of powers and duties under the Entry, Residence and Departure Act 1971-72 or the Biosecurity Act 2008; and
- (b) reconsideration by any authorised officer, in the light of any information, of a previous exercise or performance of a power or duty under the Entry, Residence and Departure Act 1971-72 or the Biosecurity Act 2008; and
- (c) any reasonable time following a request by a Customs officer that an authorised officer who is not present at the designated place consider, exercise or perform a particular power or duty under the Entry, Residence and Departure Act 1971-72 or the Biosecurity Act 2008 that—
 - (i) may, in the opinion of the Customs officer, be applicable to the person; and
 - (ii) may not be exercised or performed by an authorised officer present at the designated place at the time of the request; but
 - (iii) may be exercised or performed by the authorised officer to whom that request is made.

38. Cases requiring investigation for public health or law enforcement purposes - (1) The section applies to a person in a designated place who has arrived in the Cook Islands or who departs, or attempts to depart, from the Cook Islands, if a Customs officer has reasonable cause to suspect that the person—

- (a) is, under an enactment, liable to be detained because of an infectious disease; or
- (b) is liable to be arrested under a warrant issued by a court or by any registrar; or
- (c) is, in attempting to depart from the Cook Islands or in attempting to remove another person from the Cook Islands, contravening, or about to contravene, an enactment or an order issued by a court; or
- (d) is liable to be prosecuted for an offence punishable by imprisonment; or
- (e) has contravened any of the following enactments:
 - (i) Biosecurity Act 2008;
 - (ii) Narcotics and Misuse of Drugs Act 2004;
 - (iii) Terrorism Suppression Act 2004;
 - (iv) regulations under the United Nations (Security Council Resolutions) Act 2003;
 - (v) any enactments specified for the purposes of this section by Order in Executive Council, being an enactment that contains an offence involving the unlawful entry into the Cook Islands, or the unlawful removal from the Cook Islands of a person, matter, or thing; or
- (f) is endangering, or threatening to endanger the life, health, or safety of a person or group of persons.

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

- (a) question the person;
- (b) ascertain or determine the status of the person;
- (c) detain the person;
- (d) arrest the person.
- (3) The person must comply with any directive given under this section.
- (4) A direction under this section ceases to have effect 4 hours after it is given.
- (5) In this section—

“another officer” means—

- (a) a member of the police; or
- (b) a bailiff; or
- (c) an employee or agent of a Government department.

“designated place” means—

- (a) a Customs controlled area; or
- (b) a Customs place; or
- (c) a place approved by the Comptroller for the purposes of—
 - (i) the arrival of a craft in the Cook Islands; or
 - (ii) the departure of a craft from the Cook Islands.

Departure of craft

39. Clearance of craft - (1) Unless otherwise approved by the Comptroller, no person in charge of a craft that has, as its destination, a point outside the Cook Islands may cause that craft to depart from any Customs place unless that person has received a certificate of clearance in the prescribed form.

(2) Subject to such exemptions as may be prescribed, no person in charge of a craft that has arrived in the Cook Islands from a point outside the Cook Islands may cause that craft to depart from the place in the Cook Islands that it first arrived at, or from any subsequent place of call within the Cook Islands, without the permission of Customs and subject to the production to Customs of any documents that the Comptroller may require and to any conditions imposed by the Comptroller.

40. Certificate of clearance - Unless, otherwise approved by the Comptroller, before any certificate of clearance is granted to the person in charge of any craft to which section 39 applies, that person must—

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

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

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

43. Departure to be from Customs place only - (1) Subject to such exemptions as may be prescribed and subject to subsection (2), except with the prior permission of the Comptroller, no person in charge of any craft may—

- (a) cause that craft to depart for a point outside the Cook Islands from a place within the Cook Islands other than a Customs place; or
- (b) having obtained a certificate of clearance from a Customs place in the Cook Islands to depart for any point outside the Cook Islands, cause that craft—

- (i) to not depart immediately from that place;
 - (ii) to go to any other place in the Cook Islands.
- (2) Subsection (1) does not apply to a craft—
 - (a) that is required to berth, land, anchor, or otherwise return to a place in the Cook Islands that is not a Customs place, if this return—
 - (i) is required by any statutory or other requirement relating to navigation; or
 - (ii) is compelled by accident, stress of weather, or other necessity; or
 - (b) that is authorised to depart for a point outside the Cook Islands from a place in the Cook Islands other than a Customs place, by the Comptroller.
- (3) The provisions of sections 28(2) to (4) apply with any necessary modifications in respect of—
 - (a) any authorisation given by the Comptroller under subsection (2)(b); and
 - (b) any departure from a place in the Cook Islands (other than a Customs place) in reliance on such an authorisation.

44. Regulations relating to stores for craft - Without limiting the power to make regulations conferred by section 352, the Minister in consultation with the Comptroller may from time to time make regulations prescribing—

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

Part 5

Customs access to and use of information about border-crossing goods, persons, and craft

45. Interpretation - In this Part, unless the context otherwise requires,—

“Border crossing goods” means goods that are recorded by a person concerned in the movement of goods, persons, or craft—

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

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

- (a) as having arrived in or departed from the Cook Islands; or
- (b) as arriving in, or departing from the Cook Islands; or
- (c) as intending to arrive in, or depart from, the Cook Islands

“person concerned in the movement of goods, persons, or craft” means any of the following:

- (a) an owner or an operator of a craft that carries or transports goods or persons, or both, from the Cook Islands to a point outside the Cook Islands, or from a point outside the Cook Islands to the Cook Islands, for commercial purposes, or the agent of an owner or an operator of that kind;
- (b) a travel operator (being a person who organises the carriage, handling, or transportation of goods or persons, or both, from the Cook Islands to a point outside the Cook Islands or from a point outside the Cook Islands to the Cook Islands, for commercial purposes) or the agent of a travel operator;
- (c) an owner, occupier, or operator of a Customs controlled area used for the purpose specified in section 13(d) or (e);
- (d) an operator of a business that handles, packs, stores, or transports goods that are to be transported from the Cook Islands to a point outside the Cook Islands;
- (e) any persons or classes of persons, involved in any other way in the carriage, handling or transportation of goods, or persons, or both, from the Cook Islands to a point outside the Cook Islands or from a point outside the Cook Islands to the Cook Islands, for commercial purposes, being persons or classes of persons prescribed for the purposes of this paragraph.

46. Purpose of this Part - (1) The purpose of this Part is to facilitate—

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

Who must give Customs access to information?

47. Persons to whom section 48 or section 49 applies - Section 48 or section 49 applies to a person only if the person—

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

Information to which access must be given

48. Information about border-crossing craft - (1) A person to whom this section applies must give Customs access, on and after the date specified in the notice referred to in section 47(b), to information—

- (a) that is of the kind specified in subsection (2); and
- (b) that the person holds (whether in the Cook Islands or overseas) or has access to about any border-crossing craft.

(2) The information referred to in subsection (1)(a) is information about the border-crossing craft, about what it is carrying or transporting, about its journey to or from the Cook Islands, and about its arrival at, or departure from, the Cook Islands, whether that journey or arrival or departure has occurred, is occurring or will occur.

(3) That information may include, but is not limited to, the following information about the border-crossing craft:

- (a) if the craft is carrying or transporting goods—
 - (i) loading and discharge details;
 - (ii) goods storage details;
 - (iii) goods records; and
- (b) if the craft is carrying or transporting persons,—
 - (i) the number of persons on the craft (whether passengers, or crew or other persons);
 - (ii) the seating arrangements or on-board accommodation arrangements;
 - (iii) baggage storage details; and
- (c) if the craft is carrying or transporting goods and persons, the information in paragraphs (a) and (b).

49. Information about border-crossing persons - (1) A person to whom this section applies must give Customs access, on and after the date specified in the notice referred to in section 47(b), to information—

- (a) that is of the kind specified in subsection (2); and
- (b) that the person holds (whether in the Cook Islands or overseas) or has access to about any border-crossing person.

(2) The information referred to in subsection (1) is information held by the person, or to which the person has access, for the purpose of facilitating the border crossing person's travel to, or departure from, the Cook Islands, whether that travel or departure has occurred, is occurring, or will occur.

(3) That information may include, but is not limited to, the following information about the border-crossing person:

- (a) the person's name, date of birth, place of birth, nationality, sex and passport details;
- (b) the person's contact details (including telephone number, address and email address);
- (c) information identifying the craft on which the person has travelled, is traveling, or intends to travel;
- (d) any special conditions or arrangements the person has made regarding his or her travel;
- (e) where the person booked his or her travel;

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

50. Further provisions about giving Customs access to information under section 48 or section 49 - (1) A person to whom section 48 or section 49 applies must give Customs access to the information referred to in the section, in the form and manner prescribed (for example, in an electronic form and manner).

(2) The Comptroller may, by notice in writing, in all or any specified circumstances, exempt a person to whom section 48 or section 49 applies—

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

(3) Nothing in section 48 or section 49 requires a person to whom the section applies to give Customs access to information the person holds or has access to about an employee (for example, about a member of the crew of a craft) unless the information is information of a kind also generally held by the person, or to whom the person generally has access, in relation to passengers.

Use of information to which access must be given

51. Controls on use by Customs of information - (1) Customs may without warrant view all information to which access is given under section 48.

(2) However, Customs may view information to which access is given under section 49 only as provided in sections 52 to 55.

(3) Section 363 applies to the collection, use and disclosure by Customs of information viewed by Customs under this section or sections 52 to 55.

52. Information about travel within 28-day period - (1) Information to which access is given under section 49 may be viewed by Customs without warrant if it is information about travel within the 28-day period.

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

(3) However, if information is viewed under subsection (1), Customs may collect, use and disclose that information in accordance with section 363 whether or not it came to Customs as result of a search.

(4) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not be likely to be, frustrated if the viewing or searching were delayed until a warrant under section 54 could be obtained to authorise it.

(5) For the purposes of this section and section 53, "information about travel within the 28 day period" means information that, at any particular time, relates—

- (a) to an arrival in or departure from, the Cook Islands that, according to the information—
 - (i) occurred within 14 days before that time; or
 - (ii) is occurring at that time; or

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

53. Information about other travel may be searched for information relating to travellers within 28-day period - (1) In this section, "information about other travel" means information

- (a) to which access is given under section 49; and
- (b) that is not information about travel within the 28-day period.
- (2) This section applies to the following situation:
 - (a) Customs, in considering information viewed under section 52, finds information about travel within the 28-day period that relates to an arrival or departure, and to travel, by a person:
 - (b) Customs wishes—
 - (i) to search information about other travel to determine whether it includes information that relates to that person; and
 - (ii) to view any information that relates to that person and is found as a result of the search.
- (3) In that situation, Customs may without warrant—
 - (a) search information about other travel to determine whether it includes information that relates to the person; and
 - (b) view information in accordance with subsection (5).
- (4) However, the search may be conducted only if it can be completed within 14 days after the arrival or departure to which the information about travel within the 28-day period relates (see section 52(5)(a)).
- (5) Customs must not view information about other travel unless that information relates to the person and is found as a result of the search.
- (6) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not be likely to be, frustrated if the viewing or searching were delayed until a warrant under section 54 could be obtained to authorise it.

54. Search and viewing warrants - (1) This section applies to the following situation:

- (a) the Comptroller considers, in the light of information of any kind that is available to Customs, that there are reasonable grounds to suspect that—
 - (i) there exists a risk or threat relevant to the purpose stated in section 46(1); or
 - (ii) a relevant offence (as defined in subsection (6)) has been, is being, or will be committed:
- (b) Customs wishes—
 - (i) to search information to which access is given under section 49 to determine whether it includes information that is relevant to search criteria specified by Customs (being search criteria that are reasonably related to the information available to Customs that

- gives rise to the reasonable grounds to suspect required by paragraph (a)); and
- (ii) to view any information that is relevant to the search criteria specified by Customs and is found as a result of the search:
 - (c) the search cannot be conducted and the viewing done under section 52 or section 53, or Customs considers it would be inexpedient for those things to be done under section 52 or section 53.
- (2) In that situation, the Comptroller may, by application in writing made on oath, apply to a Judge or a Justice of the Peace for a search and viewing warrant authorising—
- (a) the carrying out of the search within 14 days after the day on which the warrant is granted (or within any extension of that period granted by a Judge or a Justice of the Peace on an application in writing for the purpose made within that period); and
 - (b) the viewing by Customs of any information that is relevant to the search criteria specified by Customs and that is included in information to which access is given under section 49, but of no other information.
- (3) The application must give details of the reasonable grounds to suspect required by subsection (1), of the information available to Customs that gives rise to those reasonable grounds to suspect, and of the search criteria specified by Customs, and it must also indicate whether the search is to be of all, or of only a specified part or parts, of the information to which access is given under section 49.
- (4) On an application under subsection (2), a Judge or a Justice of the Peace may grant a search and viewing warrant in the prescribed form, but only if he or she is satisfied that—
- (a) the reasonable grounds to suspect required by subsection (1) exist; and
 - (b) the search criteria specified by Customs are reasonably related to the information available to Customs that gives rise to those reasonable grounds to suspect.
- (5) The warrant is sufficient authority for the doing of the things specified in subsection (2)(a) and (b).
- (6) In this section and section 55, “relevant offence” means an offence described in section 46(1)(b), or relevant to the purpose stated in section 46(1) (except paragraph (b)).

55. Search and viewing without warrant in emergencies - (1) This section applies to the following situation:

- (a) the situation specified in section 54(1) applies;
- (b) the Comptroller considers that, if he or she were to apply to a Judge for a search and viewing warrant under section 54, the Judge would grant the warrant;
- (c) the Comptroller also considers that delaying a search and any resulting viewing until a search and viewing warrant can be obtained under section 54 would create a real risk that
 - (i) the countering of the risk or threat referred to in section 54(1)(a)(i) would be frustrated; or (as the case requires)
 - (ii) the prevention, detection, investigation, prosecution, or punishment of the relevant offence would be frustrated.

(2) In that situation, the Comptroller may, with no further authority than this section, have the things specified in section 54(2)(a) and (b) done as if the doing of those things were authorised by a search and viewing warrant under section 54(4).

(3) However, if the Comptroller acts under subsection (2), he or she must within 5 working days apply under section 54(2) for a search and viewing warrant in relation to the matter.

56. Procedure if viewing of information not authorised - (1) This subsection applies to both of the following situations:

- (a) the 5 working days period referred to in section 55(3) expires and the Comptroller has not made the application required by that subsection:
- (b) the application required by section 55(3) is made but, in response to it, either no warrant is granted under section 54(4), or a warrant is granted under section 54(4) authorising the doing of some only of the things done in reliance on section 55(2).

(2) In a situation to which subsection (1) applies, things done in reliance on section 55(2) must, to the extent that the doing of those things is not authorised by a warrant granted under section 54(4), be treated for the purposes only of the countering of the risk or threat referred to in section 54(1)(a)(i) or (as the case requires) of the prevention, detection, investigation, prosecution, or punishment of the relevant offence, as if they were done without the authority of section 55 or of a warrant granted under section 54(4).

(3) In a situation to which subsection (1) applies,—

- (a) the Customs must destroy immediately information viewed by it in reliance on section 55(2) and that is collected by it for a purpose specified in section 362 if the viewing of that information is not authorised by a warrant granted under section 54(4); and
- (b) other persons or bodies must destroy immediately information viewed by the Customs in reliance on section 55(2) and disclosed by it to the other persons or bodies for a purpose specified in section 363(2) and collected by the other persons or bodies if the viewing of that information is not authorised by a warrant granted under section 54(4).

57. Security of applications for warrants - (1) As soon as an application under section 54(2) has been determined by the Judge, the Registrar must place all documents relating to the application (except the warrant itself) in a packet, seal the packet, and thereafter keep it in safe custody, except as provided in this section.

(2) Despite any enactment or rule of law or rules of Court entitling a party to proceedings to demand the production of documents, no party of that kind is entitled to demand the production of documents held in safe custody under subsection (1), except in accordance with this section.

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

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

(5) If the Comptroller does not give the written notice referred to in subsection (4), the Registrar must produce the documents to the party applying for production.

(6) If a matter is referred to a Judge under subsection (4), both the person requesting production of the documents and the Comptroller opposing production must be given an opportunity to be heard.

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

- (a) the document or part contains information of a kind referred to in section 58(1); and
- (b) production of that information would involve disclosure of a kind referred to in section 58(2).

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

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

(10) If a request of that kind is made in the course of any other proceedings, the presiding judicial officer must promptly refer the matter to a Judge for adjudication of the kind referred to in subsection (9).

(11) Despite anything in this section, every Judge who is presiding over any proceedings in which the issue of a warrant under section 54 is in issue is entitled to inspect any relevant document held under subsection (1).

58. Information and disclosure in section 57(7) - (1) Information falls within section 57(7)(a) if it—

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

(2) Disclosure of information falls within section 57(7)(b) if the disclosure would be likely—

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

(3) In this section, “country” includes any State, territory, province, or other part of a country; and “international organization” means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind.

Miscellaneous provisions

59. Disposal of information collected by Customs - (1) This section applies to information
- (a) viewed under any of sections 51 to 55; and
 - (b) collected for a purpose specified in section 363(2).
- (2) The Customs must, at least once every 6 months after this section comes into force, determine whether the retention of the information by the Customs continues to be necessary for that purpose and, if it is not, must dispose of the information promptly.
- (3) This section does not limit section 56(3)(a).

60. Protection of persons acting under authority of this Part - Neither the Crown, nor the Comptroller or a Customs officer or an authorised person is liable for anything done or omitted to be done or purporting to have been done by a person in the exercise of a power conferred by this Part unless the person has not acted in good faith or has acted without reasonable care.

61. Part does not limit other access to or use of information - Nothing in this Part—
- (a) prevents a person concerned in the movement of goods, persons, or craft from giving Customs access to information otherwise than as required by or under this Part;
 - (b) prevents Customs from using otherwise than as provided in this Part information to which Customs is given access otherwise than as required by or under this Part;
 - (c) affects any obligation a person may have to give Customs advance notice of matters under section 24;
 - (d) affects any obligation a person may have under this Act to make an entry in respect of goods that are imported or that are to be imported;
 - (e) affects any powers Customs has to collect and use information under section 347.

Part 6

Entry and accounting for Goods

Importation of goods

62. Entry of imported goods - (1) Subject to any regulations made under section 63, goods that are imported or that are to be imported must be entered by the importer—
- (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
 - (b) within such time as may be prescribed or such further time as the Comptroller may allow.
- (2) Where any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry must specify the volume of alcohol in the prescribed manner.

- (3) Every person entering goods under this section must —
 - (a) answer any question asked by a Customs officer with respect to the goods; and
 - (b) on the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (4) If—
 - (a) default is made in the entry of goods under this section; or
 - (b) the goods are not claimed within such period as may be prescribed,—duty becomes due and payable on the goods, and the goods may be sold or otherwise disposed of by the Comptroller.

63. Regulations relating to entry of imported goods - Without limiting the power to make regulations under section 352, the Minister in consultation with the Comptroller may from time to time, make regulations—

- (a) prescribing when an entry is deemed to have been made for the purposes of this Act; and
- (b) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 62(1), subject to such conditions as may be prescribed; and
- (d) prescribing goods or classes of goods that are deemed to have been entered under section 62(1) and the circumstances in which and the conditions subject to which those goods are to be so deemed.

64. Fees and charges relating to importation of goods - (1) Without limiting the power to make regulations under section 358, the Minister in consultation with the Comptroller may make regulations under section 358(1)(a) prescribing fees or charges, or both, that are payable to Customs to meet or assist in meeting costs and expenses incurred by Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the importation of goods.

(2) The provisions of Part 10 that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described in subsection (1), as if those fees and charges were a duty.

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

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

(5) A failure to comply with subsection (3) does not affect the validity of any regulations of the kind described in subsection (1).

65. Imported goods to be dealt with according to entry - Goods in respect of which entry has been made and passed must immediately be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

66. Cancellation and amendments of entries - (1) The Comptroller may cancel or amend an entry for the purpose of preventing duplication of entries or for the purpose of correcting any entry or any part of an entry, as the case may be.

(2) No cancellation or amendment of an entry by the Comptroller in accordance with subsection (1) affects any penalty, liability to seizure, or criminal liability already accrued or incurred in respect of that entry by the person making it.

(3) Subject to section 143, the Comptroller may make a refund of duty in accordance with any such cancellation or amendment of an entry.

(4) A person who is dissatisfied with a decision of the Comptroller under subsection (3) may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.

67. Unloading goods - No person may unload goods that are subject to the control of Customs from a craft except—

(a) under a permit or other authorisation granted by the Comptroller, which permit or other authorisation is subject to such conditions as the Comptroller may determine; or

(b) where the safety of the craft, or the goods or persons in the craft, is threatened by collision, fire, the stress of weather or similar circumstances, or such other circumstances as may be prescribed.

68. Craft imported otherwise than as cargo - (1) Despite anything in this Act, such entries must be made in respect of a craft imported into the Cook Islands otherwise than as cargo as the Comptroller may from time to time determine in relation to any craft or class of craft by public notice.

(2) For the purpose of making entries in respect of a craft imported into the Cook Islands otherwise than as cargo, the craft is deemed to have been imported as cargo and unloaded as such on its arrival.

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

(2) Any sample required to be furnished in accordance with subsection (1) must be sufficient for the purpose for which it is taken.

Transportation within the Cook Islands

70. Transportation of imported goods - Except as otherwise permitted by the Comptroller, no goods subject to the control of Customs may be placed in a craft, vehicle, or other conveyance for transportation within the Cook Islands until entry has been made in accordance with section 62(1).

71. Removal of goods from Customs controlled area - (1) Goods that are subject to the control of Customs must not be delivered (to) or removed from a Customs controlled area except—

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

(2) The Comptroller may, by notice in writing, vary or revoke any conditions to which a permit granted by the Comptroller under subsection (1)(c) is subject, or may revoke those conditions and impose new conditions or make revoke the permit completely.

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

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

72. Temporary removal of goods from Customs controlled area - (1) Subject to section 198 and to any other provisions of this Act, the Comptroller may permit goods to be temporarily removed from a Customs controlled area without payment of duty for such time and in such quantities as he or she may approve.

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

Exportation of goods

73. Entry of goods for export - (1) Subject to any regulations made under section 74, goods that are exported or that are to be exported must be entered by the exporter—

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

(2) Every person who makes an entry under this section must—

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

(3) In the case of goods to be exported under drawback, the making of any such entry is deemed to be the making of claim for drawback.

(4) Unless the Comptroller in any particular case otherwise determines, no right to drawback exists in the case of goods placed on a craft before entry has been made and passed.

(5) Except as otherwise permitted by the Comptroller, goods must not be loaded for export until entry has been made in the prescribed form and manner.

(6) Despite an entry being passed in accordance with subsection (5), the Comptroller may revoke the goods' permission to export if the Comptroller has reasonable cause to suspect the goods endanger, or threaten to endanger,—

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

74. Regulations relating to entry of goods for export - Without limiting the power to make regulations under section 352, the Minister, in consultation with the Comptroller, may from to time make regulations—

- (a) exempting specified goods or goods of a specified class from the requirements of section 73(1), subject to such conditions as may be prescribed; and
- (b) prescribing goods or classes of goods that are to be deemed to have been entered under section 73(1) and the circumstances in which and the conditions subject to which those goods are to be so deemed.

75. Cook Islands certificates of origin for goods for export to party to free trade agreement - (1) A certification body authorised by the Comptroller under section 76 (a "certification body") in relation to a party to a free trade agreement may issue a Cook Islands certificate of origin in respect of goods for export to that party.

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

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

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

(4) The Queen's Representative may, by Order in Executive Council, declare a country that is a party to the PICTA to be a specified PICTA party for the purposes of this Act.

(5) For the purposes of this section,—

"PICTA" means the Agreement establishing the Pacific Island Countries Trade Agreement done at Nauru on 18 August 2001

"free trade agreement" means the PICTA

"party to a free trade agreement" means, in relation to the PICTA, a specified PICTA party

"specified PICTA party" means a country that is for the time being declared by Order in Council to be a specified PICTA party for the purposes of this Act.

76. Bodies authorised to issue the Cook Islands certificates of origin - (1) The Comptroller may designate a body as a certification body if the Comptroller is satisfied that the body meets the prescribed criteria (if any).

(2) A designation may be subject to any prescribed terms and conditions and any additional terms and conditions the Comptroller thinks fit.

77. Regulations relating to the Cook Islands certificates of origin and certification bodies - Without limiting the power to make regulations conferred by section 352, the Cabinet may make regulations for any of the following purposes:

- (a) prescribing forms for the purposes of sections 75 and 76; and
- (b) prescribing the manner in which applications for designation as a certification body must be made; and
- (c) prescribing criteria for certification bodies; and
- (d) prescribing terms and conditions subject to which designations as a certification body may be made; and
- (e) prescribing fees.

78. Goods for export to be dealt with according to entry - (1) In the case of goods that have been entered for export, the person making the entry, or the owner of the goods, as the case may be, must immediately export the goods to a point outside the Cook Islands in accordance with the entry and with the provisions of this Act relating to the exportation of goods.

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

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

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

79. Goods for export not to be landed - No goods loaded for export may, without the permission of a Customs officer, be landed except at a point outside the Cook Islands.

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

Customs seals

81. Customs seal may be applied to goods for export - (1) The Comptroller may, by notice in writing specifying the date on and after which the appointment takes effect, appoint a Customs officer to apply Customs seals to packages of goods to be exported.

(2) The notice must specify the circumstances in which the officer or other person may apply a Customs seal to a package of goods, and must prohibit him or her from applying a Customs seal in all other circumstances.

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

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

(4) The notice must also specify the circumstances in which Customs officer or other person may alter, remove, damage, dispose of, or otherwise interfere with a Customs seal applied to a package of goods, and must prohibit him or her from interfering in any way with a Customs seal of that kind in all other circumstances.

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

82. Warning notices for packages to which seal applied - A notice of appointment under section 81 must also require Customs officer or other person concerned, on applying a Customs seal to a package of goods that are not goods to be exported under a Customs-approved secure export scheme, to ensure that there is attached to the package a warning notice that explains in terms approved by the Comptroller—

- (a) that the goods in the package are, from the time when a Customs seal is first applied to the package until the exportation of the goods to a point outside the Cook Islands, goods subject to the control of Customs;
- (b) that the powers of detention and search in section 177 are available in respect of a vehicle in the Cook Islands if there are suspected to be in or on the vehicle goods that are, or suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a package to which a Customs seal has been applied;
- (c) that a Customs officer may, under section 180(2), question 1 or more of the following persons about any cargo destined to be exported from the Cook Islands—
 - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it or has within the previous 72 hours had in it or on it, goods subject to the control of Customs and in a package to which a Customs seal has been applied;
 - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of Customs and in a package to which a Customs seal has been applied;
 - (iii) a person employed by a person described in subparagraph (i) or (ii);
- (d) that the powers in section 193 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a package to which a Customs seal has been applied.

Customs approved secure exports schemes

83. Comptroller may approve secure exports scheme - (1) On an application for the purpose in writing by a person involved in the carriage, handling, transportation, or exportation of goods for export (in this section and section 86 and 89 called an "exporter"), the Comptroller may approve a secure exports scheme, and so make it a Customs approved secure exports scheme.

(2) The Comptroller must ensure that the exporter concerned is notified promptly and in writing of any decision to give or to decline an approval under this section.

(3) An approval under this section must be in writing, may be given subject to any conditions the Comptroller specifies in the approval, and takes effect either on the day after the date on which it is given or on any later date specified in the approval.

(4) An approval under this section may be revoked by the Comptroller by notice in writing given to the exporter concerned and specifying both any conditions to which the revocation is subject and the date on or after which the revocation takes effect.

(5) Subsections (1) to (4) apply (with all necessary modifications) to any amendment to a secure exports scheme.

(6) On an application for the purpose by the exporter concerned, the Comptroller must revoke an approval under this section of all of a secure exports scheme. However, the revocation must be subject to the condition that goods remain subject to the scheme until exported if, at the time the revocation takes effect the goods have been secured in a Customs-approved secure package under the scheme but not yet exported.

(7) An applicant who is dissatisfied with a decision of the Comptroller under this section may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.

84. Purpose of secure exports scheme - The purpose of a secure exports scheme is to help to ensure that goods to be exported under the scheme are—

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

85. Matters to be specified in secure exports scheme - (1) A secure exports scheme must specify how the goods to be exported under the scheme are to be packed, including—

- (a) the secure package to be used;
- (b) the seal or markings to be applied to the package, as soon as it is secured—
 - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (ii) to help to identify tampering or interference with the package after it is secured.

(2) A secure exports scheme must also specify any conditions required by the Comptroller as to—

- (a) the persons who are to pack the goods, and the security checks to be applied to those persons;
- (b) the conditions in which packing is to occur (for example, the area or areas in which packing is to occur, and the controls on the entry and exit of persons and goods to that area or those areas):

- (c) any other requirements relating to how the goods are to be packed.
- (3) A secure exports must also specify how, on the completion of the packing of the goods, the goods are to be conveyed to the place of shipment and shipped, including any conditions required by the Comptroller as to—
 - (a) the persons who are to convey the goods, and the security checks to be applied to those persons;
 - (b) the manner in which the goods to be conveyed;
 - (c) any place or places of security en route to the place of shipment in which the goods are to be stored in the course of being conveyed to the place of shipment and shipped.

86. Matters to be acknowledged in secure exports scheme - A secure exports scheme must include express acknowledgement by the exporter concerned—

- (a) that the goods to be exported under the scheme are, from the time when they are first secured in a Customs-approved secure package until the exportation of the goods to a point outside the Cook Islands, goods subject to the control of Customs;
- (b) that the powers of detention and search in section 177 are available in respect of vehicle in the Cook Islands if there are suspected to be in or on the vehicle goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package;
- (c) that a Customs officer may, under section 180(2), question 1 or more of the following persons about any cargo destined to be exported from the Cook Islands—
 - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, has within the previous 72 hours had in or on it, goods subject to the control of Customs and in a Customs-approved secure package;
 - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, goods subject to the control of Customs and in a Customs-approved secure package;
 - (iii) a person employed by a person described in subparagraph (i) or (ii);
- (d) that the powers in section 193 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of Customs; and
 - (ii) in a Customs-approved secure package.

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

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

88. Use of Customs seals in relation to goods to be exported under Customs-approved secure exports schemes - (1) Nothing in this Act prevents a Customs seal from being used in relation to a Customs-approved secure package after an approved seal or markings of the kind referred to in section 85(1)(b) have been applied to the package in accordance with the relevant Customs-approved secure exports scheme.

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

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

(2) Nothing in this Act prevents the exporter from being involved in the carrying, handling, transportation or exportation of goods for export otherwise than under that scheme or those schemes.

Part 7

Prohibited imports and prohibited exports

90. Prohibited imports - (1) It is unlawful to import into the Cook Islands—

- (a) any of the goods specified in Schedule 1; or
- (b) all publications that are objectionable within the meaning of this Act in the hands of all persons and for all purposes; and all other indecent or obscene articles;
- (c) goods or electronic publications the importation of which is prohibited by a regulation made under subsection (3) or any other written law of the Cook Islands where the importation of such goods is prohibited.

(2) Electronic publications the importation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act.

(3) The Minister may from time to time make regulations to prohibit the importation into the Cook Islands of—

- (a) any specified goods or electronic publications; or
- (b) goods or electronic publications of a specified class or classes,—

if in the opinion of the Minister after consulting the Comptroller, the prohibition is necessary in the public interest.

(4) A prohibition imposed under this section—

- (a) may be general; or
- (b) may be limited to the importation of goods or electronic publications from a specified place or by or from a specified person or class of persons; or
- (c) may, whether general or limited, be absolute or conditional.

(5) A conditional prohibition may allow the importation of goods or electronic publications—

- (a) under the authority of a licence or a permit (whether granted before or after the importation of the goods), or a consent, to be granted by the Comptroller or by any other person named in the regulations, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the Comptroller or other person granting the licence, permit, or consent; or
- (b) on or subject to any other prescribed conditions.
- (6) No goods otherwise dutiable are exempt from duty because their importation is unlawful.
- (7) All regulations made under the Customs Act 1913 and in force at the commencement of this section prohibiting the importation of goods into the Cook Islands are deemed to have been validly made under this section and continue in force until revoked or replaced under this Act.

91. Prohibited exports – (1) It is unlawful to export from the Cook Islands—

- (a) all publications that are objectionable within the meaning of this Act in the hands of all persons and for all purposes; and
- (b) goods or electronic publications the exportation of which is prohibited by a regulation made under subsection (2) or any other written law of the Cook Islands where the exportation of such goods is prohibited.
- (2) Electronic publications the exportation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act
- (3) The Minister may from time to time, make regulations to prohibit the exportation from the Cook Islands of—
 - (a) any specified goods or electronic publications; or
 - (b) goods or electronic publications of a specified class or classes,—
 if in the opinion of the Minister after consulting the Comptroller, the prohibition is necessary in the public interest.
- (4) A prohibition imposed under this section—
 - (a) may be general; or
 - (b) may be limited to the export of goods or electronic publications to a specified place or by or to a specified person or class of persons; or
 - (c) may, whether general or limited, be absolute or conditional.
- (5) A conditional prohibition may allow the exportation of goods or electronic publications—
 - (a) under the authority of a licence, permit or consent, to be granted by the Comptroller or by any other person named in the regulations, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the Comptroller or other person granting the licence, permit or consent; or
 - (b) on or subject to any other prescribed conditions.
- (6) No prohibition under this section applies to goods that are already loaded into the exporting craft at the time when the prohibition comes into force.
- (7) Unless otherwise specified in the regulations, a regulation under this section prohibiting the exportation of goods extends to and applies to the shipment of the goods for use as stores by a craft.

92. Production of licence or permit for goods - Where, under this Act, or any other Act or under any regulations made under this Act, the importation or exportation of goods, or of goods of any class or kind, is prohibited except under the authority of a licence or permit, the Comptroller may, if he or she thinks fit, refuse to pass an entry for those goods, or for goods of that class or kind until he or she is satisfied that a licence has been issued.

Part 8 Duties

93. Certain terms defined in Customs Tariff Act 2012 - For the purposes of this Act, unless the context otherwise requires, the terms "Normal Tariff, Preferential Tariff, rate of duty, Standard Tariff, Tariff, Tariff Heading" and "Tariff Item" have the meanings given to them by the Customs Tariff Act 2012.

Valuation of goods

94. Importer to specify Customs value on entry - (1) Every person who makes entry of goods imported or to be imported must, on making entry, specify the Customs value of the goods, determined in accordance with Schedule 2—Valuation of goods for the purposes of the Tariff.

(2) Every importer or agent of an importer who makes an assessment under subsection (1) must—

- (a) keep the documents, records, and information in respect of that entry in such manner and for such period as is required by section 129 and any regulations made for the purposes of that section; and
- (b) when required by Customs, produce those documents, records, and information for the purpose of establishing the accuracy of the assessment.

95. Amendment of valuation assessment - (1) If the Comptroller is satisfied, whether as the result of an investigation carried out under section 197, or as the result of an audit or examination carried out under section 201, or for any other reason, that an assessment made under section 94(1) in respect of goods is—

- (a) inconsistent with Schedule 2—Valuation of goods for the purposes of the Tariff; or
- (b) for any other reason, incorrect,—

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

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

- (a) an amended assessment made under subsection (1); and
- (b) the basis for the amended assessment, and where applicable, the relevant clauses of Schedule 2 relied upon for the valuation of goods for the purposes of the Customs Tariff Act 2012 that are relevant to the amended assessment.

(3) Subsection (1) applies whether or not the goods have been released from the control of Customs or whether or not any duty assessed has been paid.

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

96. Currency and exchange rate - (1) Customs value must be determined or declared in the currency of the Cook Islands where one Cook Islands dollar equals one New Zealand dollar.

(2) Where an amount that is required under a provision of this Act to be taken into account for the purpose of assessing duty or for any other purpose is not an amount in the currency of the Cook Islands, the amount to be so taken into account is the equivalent amount in the currency of the Cook Islands in accordance with a fair rate of exchange set regularly and determined by the Comptroller.

(3) The regular determinations from time to time of the fair rates of exchange of foreign currency made by the Comptroller must be publicly notified.

(4) Where an amount is required to be converted into the currency of the Cook Islands under subsection (1) of the section, the amount must be converted,—

- (a) in the case of goods in respect of which an entry has been made, at the rate applying as at the date of the making of the first entry (not being an entry for removal) for those goods;
- (b) in the case of other goods (at the rate applying as at the date of the first assessment of Customs duty on those goods).

97. Crown's right of compulsory acquisition - (1) For the protection of the revenue against the undervaluation of goods subject to ad valorem duty, goods in respect of which entry is made may, at any time while they remain subject to the control of Customs, be acquired by the Crown.

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

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

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

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

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

- (a) equal to their declared Customs value with the addition of—
 - (i) such charges for freight, insurance and other matters incidental to their importation as the Comptroller thinks reasonable; and
 - (ii) any duties already paid on the goods; and
- (b) paid to the importer without further appropriation than this section within 20 working days of the acquisition of the goods.

(7) Nothing in this section limits or affects any other powers of Customs in respect of the goods or any liability of the importer or any other person in respect of any offence committed in respect of the goods.

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

Origin and preferential tariff provisions

98. Origin of fish or other produce of the sea - (1) In the case of fish or other produce of the sea, or goods produced or manufactured wholly or partly from such fish or produce at sea, anything done by or on board a ship belonging to a country (other than the Cook Islands) is deemed, for the purposes of this Act and any other written law to have been done in that country, and any such produce of the sea or goods so produced or manufactured at sea, if brought direct to the Cook Islands, are deemed to be imported into the Cook Islands from that country.

(2) If any question arises as to the country to which any ship belongs for the purposes of subsection (1), the question must be determined by the Comptroller, whose decision is final.

99. Regulations for determining country of produce or manufacture - Without limiting the power to make regulations conferred by section 352, the Minister may from time to time make regulations for all of the following purposes:

- (a) prescribing the goods or any type or class of goods that are deemed to be the produce or manufacture of any company or any group of countries—
 - (i) for the purposes of this Act; or
 - (ii) for the purposes of the Customs Tariff Act 2012; and
- (b) prescribing the conditions to be fulfilled before goods are deemed to be the produce or manufacture of any country or any group of countries; and
- (c) authorising the Comptroller to determine (in relation to specific goods)—
 - (i) that the percentage of the goods' factory or works cost is to be increased or decreased;
 - (ii) the valuation or method of valuation (including a reduced or zero valuation) if any material, labour, or overhead used in the goods production has been supplied free of charge or at a reduced cost;
 - (iii) the required percentage of qualified area content in case of unforeseen circumstances that are unlikely to continue;
 - (iv) variations or conditions relating to the goods entering the commerce of another country.

100. Conditions precedent to entry of goods at preferential rates of duty - (1) Where it is claimed in respect of any goods that they are entitled under this Act or any other Act or authority to be entered free of duty or at any rate of duty lower than (that) set forth in the (Normal Tariff) in respect of such goods, the Comptroller may require the claim to be verified at any time of entry or any subsequent time (including any time after the goods have ceased to be subject to the control of Customs).

(2) Where the Comptroller requires such a claim to be verified at the time of entry of the goods and the claim is not verified to the satisfaction of the Comptroller at that time, the goods in respect of which the claim has been made must not be so entered.

101. Unsubstantiated preference claims - (1) If the Comptroller is satisfied, whether as the result of an investigation carried out under section 197, or as the result of an audit, or examination carried out under section 201, or for any other reason, that the country of which goods are the produce or manufacture cannot be ascertained because no evidence can be found, the goods are deemed, for the purposes of this Act or any other Act or authority to be the produce or manufacture of a country subject to the rates of duty set out in the Normal Tariff.

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

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

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

Part 9

Excise and excise-equivalent duties

102. Manufacture of excisable goods - Subject to such exceptions as may be provided for under this Act, no person may manufacture goods specified for the purpose of this section in the Excise Order except in a manufacturing area that is licensed under this Act.

103. Exemption for tobacco manufactured for personal use - (1) Section 102 does not apply to the manufacture of tobacco in a private house or dwelling place, but only if and as long as the conditions specified in subsection (2) are met.

(2) The conditions are as follows:

- (a) the tobacco must be manufactured by an individual (the individual) who is 18 years or older;
- (b) the individual must manufacture the tobacco in the individual's private house or dwelling place, for the individual's personal use and not for sale or other disposition to any other person;
- (c) the leaves or plants used in the manufacture of the tobacco must have been grown
 - (i) on the land on which the individual's private house or dwelling place is located; and
 - (ii) for the individual's personal use and not for sale or other disposition to any other person;
- (d) the amount of manufactured tobacco that is manufactured in the individual's private house or dwelling place, in any year must not exceed 8 kilograms.

104. Exemption for beer or wine manufactured for personal use - (1) Section 102 does not apply to the manufacture of beer, wine, or spirits in an individual's private house or dwelling place, but only if and as long as the beer, wine, or spirits are manufactured exclusively for the individual's personal use and not for sale or other disposition to any other person.

(2) For the purposes of this section, "personal use" means—

- (a) use only by the person who manufactured the beer or wine; and

- (b) the beer or wine was not for sale or other disposition to any other person including members of the individual's family; and
- (c) that the beer, wine, or spirits manufactured or wine manufactured is not more than—
 - (i) 20 litres of beer per month; or
 - (ii) 10 litres of wine per month; or
 - (iii) 2 litres of spirits.

105. Goods deemed to have been manufactured - For the purposes of this Act—

- (a) compressed natural gas is deemed to have been manufactured by a licensee of a manufacturing area when natural gas supplied by the licensee to a compressed natural gas fuelling facility is compressed for use as a motor vehicle fuel;
- (b) goods on which work has been done by a contractor are deemed to have been manufactured by the contractor.

106. Entry of excisable goods - (1) Subject to any regulations made under section 107, all goods that are specified for the purpose of this subsection in the Excise Order must, on removal from a Customs controlled area, be entered by the licensee of that area—

- (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
- (b) within such time as may be prescribed.

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

(3) Goods in respect of which entry has been made and passed must immediately be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

107. Regulations relating to an entry of excisable goods - Without limiting the power to make regulations under section 352, the Minister, in consultation with the Comptroller, may from time to time, make regulations—

- (a) prescribing when entries of excisable goods are deemed to have been made for the purposes of this Act; and
- (b) prescribing the conditions under which entries of excisable goods are deemed to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 106, subject to such conditions as may be prescribed.

108. Removal for home consumption - For the purposes of this Part, goods are deemed to be removed for home consumption when the goods are physically removed from a Customs controlled area otherwise than when they are—

- (a) moved to another Customs controlled area under an approval given by the Comptroller and for such purposes as may be approved by the Comptroller; or
- (b) temporarily removed under an approval given by the Comptroller and for such purposes as may be approved by the Comptroller; or
- (c) removed for export or to an export warehouse.

109. Excise duty on goods manufactured in manufacturing areas - (1) In respect of all goods that are manufactured in a manufacturing area and that are specified for the purpose of this subsection in the Excise Order there must be levied, collected and paid excise duties, if any, at the appropriate rates set out in the Excise Order.

(2) If the excise duty applicable to any goods pursuant to sub-section (1) is an *ad valorem* excise duty, the value of the goods for the purposes of such excise duty must be determined in accordance with Schedule 3.

(3) Despite anything in this Part, if the excise duty is a combination of a specific rate and an *ad valorem* rate, the excise duty payable must be determined as the aggregate of –

- (a) the amount of excise duty calculated by applying the specific rate; and
- (b) the amount of excise duty calculated by applying the *ad valorem* rate to the value for duty.

110. Excise duty on goods manufactured otherwise than in a manufacturing area - (1) Subject to subsection (2), where goods specified for the purpose of this subsection in the Excise Order are manufactured in an area that is not licensed under section 15, the provisions of this Part and Part 10 apply as if the area were licensed as a manufacturing area under this Act.

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

- (a) goods that are manufactured in an area that under a direction of the Comptroller under section 15(4) is not required to be licensed; or
- (b) goods that are covered by an exemption prescribed under this Act that applies to section 13; or
- (c) tobacco manufactured for personal use that comes within the exemption set out in section 103; or
- (d) beer or wine manufactured for personal use that comes within the exemption set out in section 104.

111. Excise-equivalent duty on imported goods - (1) Subject to this Act, and in addition to any other duties or levies payable on imported goods, excise-equivalent duty at the appropriate rate specified in the Excise Order must be levied, collected and paid on all goods specified for the purpose of this subsection in the Excise Order that are imported.

(2) Where goods on which excise-equivalent duty is payable under this section are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry in respect of those goods must specify the volume of alcohol in the prescribed manner.

(3) Excise-equivalent duty becomes payable—

- (a) when entry for home consumption is passed; or
- (b) if, before entry for home consumption, the goods are dealt with in breach of a provision of this Act.

(4) If the excise-equivalent duty applicable to such goods is an *ad valorem* duty, the value of the goods for the purposes of that excise-equivalent duty must be determined in accordance with the Schedule 3.

112. Excise duty a Crown debt - (1) The excise duty is a debt due to the Crown and is recoverable by action at the suit of the Comptroller on behalf of the Crown—

- (a) in relation to goods specified for the purpose of this subsection in the Excise Order that are manufactured in a manufacturing area, immediately on removal of the goods for home consumption in accordance with section 108; or
 - (b) in relation to goods specified for the purpose of this subsection in the Excise Order that are, except as provided in section 110(2), manufactured outside a manufacturing area, immediately on manufacture.
- (2) Excise duty paid under subsection (1) is owed by—
 - (a) the licensee or occupier of the manufacturing area; and
 - (b) every person who is or who becomes the owner of the goods before the excise duty has been fully paid.
- (3) The liability of the persons referred to in subsection (2) is joint and several.
- (4) For the purposes of this section, excise duty owed under subsection (1) must be paid to Customs within the time required by or prescribed under this Act.

113. Excise Orders - (1) The Queen's Representative, by Order in Executive Council, may from time to time—

- (a) specify goods for the purposes of all or any of sections 13(a), 102, 106(1), 109(1), 110(1), 111(1), 112(1), 151(1)(b), and 154(1)(b), and for the purposes of any other provision of this Act that contemplates goods being specified under this section;
 - (b) specify rates of excise duty and excise-equivalent duty that are payable in respect of such goods under this Act;
 - (c) specify any other matters that are contemplated by this Act to be provided for in an Order made under this section.
- (2) An Order made under this section may (without limitation)—
 - (a) refer to any heading, heading number, sub-heading, item or item number or the title of any Part, section, chapter, or sub-chapter of the Tariff;
 - (b) include notes;
 - (c) refer to statistical units.

114. Power to amend Excise Order for certain purposes - (1) Subject to subsection (2), the Minister, by order, may from time to time suspend or amend the Excise Order in whole or in part, and by the same or a subsequent order, and in its place, impose on any goods specified in the Excise Order such excise duties and excise equivalent duties as the Minister thinks fit.

(2) Excise duties and excise equivalent duties imposed on goods under subsection (1) must not exceed the rate of excise duty or excise-equivalent duty on those goods set out in the Excise Order.

- (3) The Minister may from time to time amend the Excise Order—
 - (a) by revoking, inserting, or amending any heading, heading number, sub-heading, item or item number or the title of any Part, section, chapter, or sub-chapter of the Tariff referred to in the Order in such manner as is necessary to ensure that the Order conforms to the Tariff; or
 - (b) by revoking, suspending, or amending a provision of the notes forming part of the Order, or by inserting a new provision in the notes, for the purpose of ensuring the proper operation of the Order; or

- (c) by revoking, suspending, inserting or amending a statistical unit in the Order.
- (4) Despite anything in subsection (3) (c), the Comptroller may, by public notice, revoke, suspend, insert or amend a statistical unit in the Excise Order.
- (5) No amendment made under this section may alter the duties or exemptions from duty under this Act applicable to goods classified under an item or heading so amended.

115. Indexation of rates of excise duty and excise equivalent duty on alcoholic beverages and tobacco products - (1) Subject to subsections (2) to (4), the Minister, by order, may from time to time amend the Excise Order to impose such rates of excise duty and excise-equivalent duty as the Minister thinks fit on all or any of the alcoholic beverages and tobacco products as defined in subsection (4).

(2) Any change in the rates of excise duty and excise-equivalent duty made by the Minister under subsection (1)—

- (a) must be limited in accordance with this section having regard to movements in the Consumers Price Index All Groups excluding credit services; and
 - (b) in the case of a change in the rates of excise duty and excise-equivalent duty for alcoholic beverages, may come into force on the 1st day of July in any calendar year; and
 - (c) in the case of a change in the rates of excise duty and excise-equivalent duty for tobacco products, may come into force only on the 1st day of January in any calendar year.
- (3) No new rate of excise duty or excise-equivalent duty imposed on any goods under subsection (1) may exceed a rate calculated in accordance with the following formula—

“a” divided by “b” multiplied by “c”

Where—

- a is the index number of the Consumers Price Index All Groups excluding credit services issued by the Government Statistician for—
 - (i) the quarter ending on the 31st day of March in the calendar year in which the order is to come into force, in the case of an order relating to alcoholic beverages; or
 - (ii) the quarter ending on the 30th day of September in the calendar year in which the order is to come into force, in the case of an order relating to tobacco products; and
 - b is the Index number of the quarterly Consumers Price Index All Groups excluding credit services issued by the Government Statistician for the quarter ending 12 months before, and expressed on the same basic quarter as, the relevant quarter specified in item a of this formula; and
 - c is the existing rate of duty in respect of the goods to which the order relates.
- (4) In this section,—

“alcoholic beverages” means goods that are—

- (a) goods specified in headings 22.03, 22.04, 22.05, 22.06, 22.08, 99.10, 99.20, 99.25, 99.30, 99.45 and 99.50 of the Excise Order, not being goods that are exempt from excise duty and excise-equivalent duty; or
- (b) undenatured ethyl alcohol and other goods specified in headings 21.05, 21.06, 22.07, 33.02, 99.05, 99.06, 99.35, 99.42 and 99.43 of the Excise Order (also not being goods exempt from excise duty and excise-equivalent duty)

“tobacco products” means goods specified in headings 24.02, 24.03, 99.60 and 99.65 of the Excise Order.

116. Power of Minister to suspend, remit, refund or create exemptions from excise duties and excise-equivalent duties on goods supplied to certain organisations and their members - (1) The Minister may from time to time make regulations to suspend, order the remission or refund of, or create exemptions from, excise duty and excise-equivalent duties in respect of goods or classes of goods manufactured in the Cook Islands or imported into the Cook Islands that are—

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

(2) The Comptroller may at any time impose such conditions as he or she thinks fit in respect of goods or a class of goods to which a regulation made for the purposes of this section relates.

Miscellaneous duty provisions

117. Duty payable on goods consumed before removal from manufacturing area - (1) Duty is payable on goods consumed before removal from a manufacturing area in the same manner as if the goods had been removed on the date they had been consumed and the provisions of this Act apply, with all necessary modifications, accordingly.

(2) Despite subsection (1), no liability for duty arises where excisable products manufactured within a manufacturing area are used in the manufacturing process carried on in that manufacturing area.

(3) If, after making an allowance of not more than 2 percent on the quantity of spirits delivered to be rectified or compounded, it is found that the volume of alcohol rectified or compounded is less than the volume delivered, the full excise duty on the deficiency so found must immediately be paid by the rectifier or compounder to the Comptroller.

118. Excise duty on spirits and other alcohol beverages used in the manufacture of non-excisable products - (1) Where the Comptroller has reasonable cause to suspect that a person to whom the Comptroller has granted an approval to which this subsection applies has not complied with the conditions set down in the approval issued to that person, the Comptroller may make an assessment of duty.

(2) Where an assessment is made under subsection (1), the rate of duty to be applied must be the rate that would be applicable if the ethyl alcohol or alcoholic beverage were entered for home consumption.

(3) The duty assessed in accordance with this section must be paid in accordance with subsection (4) by the person to whom the approval has been granted.

(4) The due date for the payment of any duty assessed in accordance with this section is the date that is 20 working days after the date on which written notice of the assessment is given by the Comptroller.

(5) The Comptroller must, if satisfied that the non-compliance with the conditions was neither intentional nor negligent, remit or refund the duty on the goods.

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

119. Assessment of excise duty on beer and wine otherwise exempt - (1) Where the Comptroller has reasonable cause to suspect that any quantity of beer or wine that has been entered as exempt from excise duty has subsequently been dealt with in any manner otherwise than in accordance with the provisions of this Act, the Comptroller may make an assessment of excise duty.

(2) The duty assessed in accordance with this section is owed by—

(a) the licensee of the manufacturing area in which the beer was manufactured; and

(b) the individual who manufactured the beer.

(3) The liability of the persons referred to in subsection (2) is joint and several.

(4) The due date for the payment of any duty assessed in accordance with this section is the date that is 20 working days after the date on which written notice of the assessment is given by the Comptroller.

120. Duty credits - (1) Where the licensee of a manufacturing area purchases materials or goods for use in manufacture, the licensee may, at the time of making an entry for home consumption as required by section 106, claim, as a credit, excise duty paid in respect of those materials or goods.

(2) The amount of the excise duty that may be claimed by the licensee of a manufacturing area as a credit relating to materials to which subsection (1) applies, is the amount of excise duty originally paid by the licensee of a Customs controlled area, importer or owner in respect of the materials but does not include any additional excise duty paid under section 122.

(3) Where the amount of the credit exceeds the amount of excise duty payable by the licensee in the home consumption entry in which the credit is claimed, the amount of the excess may, at the discretion of the Comptroller, be refunded to the licensee.

Part 10**Assessment and recovery of duty**

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

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

(3) Subject to this Act, such debt becomes due and payable when—

- (a) goods have been entered in accordance with section 62 and the entry has been passed for home consumption; or
- (b) goods have been entered in accordance with section 62 for removal to a manufacturing area; or
- (c) goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered under section 62; or
- (d) an offence has been committed against this Act in respect of the goods.

(4) Such debt is recoverable by action at the suit of the Comptroller on behalf of the Crown.

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

- (a) the goods have ceased to be subject to the control of Customs; or
- (b) a bond or other security has been given for the payment of duty; or
- (c) no proper assessment of duty has been made under this Act or that a deficient assessment of duty has been made.

(6) The Comptroller may, subject to such terms and conditions as he or she may impose, approve any person or class of persons as persons who may defer the payment of duty due under this section and, for that purpose, may determine a duty accounting period; and may suspend or withdraw that approval or vary any term or condition under which the approval is given or vary the duty accounting period.

(7) Where the Comptroller makes any decision under subsection (6), the persons or class of persons affected must be advised of the decision by notice in writing.

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

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

122. Additional duty imposed - (1) Where any duty the payment of which has been deferred in accordance with section 121(6), or which is due in accordance with section 112(4) remains unpaid by the due date for payment, there must be imposed—

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

(2) Despite subsection (1), the Comptroller may, in his or her discretion, remit or refund the whole or any part of any additional duty imposed by that subsection.

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

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

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

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

(2) If the Comptroller has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the Comptroller may assess the duty at such amount as the Comptroller thinks proper.

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

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

124. Amendment of assessment - (1) Subject to section 128, the Comptroller may from time to time make such amendments to an assessment of duty as he or she thinks necessary in order to ensure the correctness of the assessment even though the goods to which the duty relates are no longer subject to the control of Customs or that the duty originally assessed has been paid.

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

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

125. Due date for payment of duty - (1) Unless otherwise specified in this Act, the due date for the payment of duty assessed under section 123(2) or reassessed under section 124 or demanded under section 136 or section 137 is the date that is 20 working days after the date on which written notice of the assessment or amended assessment or demand, as the case may be, is given by the Comptroller.

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

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

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

(5) Where all or part of any duty remains unpaid by the due date, the amount outstanding is deemed to have been increased by an amount calculated in accordance with section 122(1).

126. Assessment presumed to be correct – (1) Every assessment made by the Comptroller under this Act, including an assessment made by way of amendment, is presumed to be correct and duty is payable accordingly unless on an appeal a different amount is determined to be the duty payable on the goods it is determined that no duty is payable.

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

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

(2) Subject to subsection (3), if the appellant is successful in the appeal or the proceedings, the amount (if any) of the duty or any security received by the Comptroller in excess of the amount that, in accordance with the decision on the appeal or the proceedings, was properly payable must immediately be refunded to the appellant by the Comptroller, or as the case may be, the appellant must be released from the conditions of the security imposed under section 198.

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

128. Limitation of time for amendment of assessment – (1) Where an assessment of duty has been made under this Act, the Comptroller is not entitled to alter that assessment so as to increase the amount of the assessment after the expiration of 4 years from the date on which the original assessment was made.

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

129. Keeping business records - (1) Every licensee, importer, exporter and certification body authorised by the Comptroller under section 76 must keep or cause to be kept in the Cook Islands such records, for such period of time not exceeding 7 years, as may be prescribed.

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

- (a) make the records available to Customs; and
- (b) provide copies of the records as required; and
- (c) answer any questions relevant to matters arising under this Act asked by any officer in respect of them.

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

130. Giving Customs access to business records - (1) This section applies to a person only if the person—

- (a) is a person to whom section 129(1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, the Cook Islands, including a person involved in the transportation of goods to a Customs place from which goods for export will proceed to a point outside the Cook Islands; and
- (b) has been required by the Comptroller by notice in writing to comply with this section on and after a date specified in the notice in writing.

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

- (a) if the person is a person to whom section 129(1) applies, give Customs access to the records the person is required to keep under section 129; and
- (b) if the person is a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, the Cook Islands, give Customs access to any records the person may currently keep of the kind required to be kept under section 129.

(3) A person to whom this section applies must give Customs that access in the form and manner prescribed, including in an electronic form and manner, and must ensure that Customs has that access at all reasonable times.

(4) The Comptroller may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.

(5) To avoid doubt, nothing in this section affects any obligation under section 129 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of, records.

131. Meaning of related - For the purposes of section 132, one person (A) is "related" to another person (B)—

- (a) where A is connected to B by blood relationship, marriage, or adoption, or where A is a trustee of a trust in respect of which B is a beneficiary, and for the purposes of this paragraph—
 - (i) persons are connected by blood relationship if within the fourth degree of relationship traced through a common ancestor:
 - (ii) persons are connected by marriage if they are married to each other or have a relationship in the nature of marriage with the other (hereby called the partners), and includes a relationship between one partner and a person connected by blood relationship with the other partner:
 - (iii) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:
- (b) if B is a company, where A is a director or officer of B, or is related (within the meaning of paragraph (a)) to a director or officer of B, or is directly or indirectly able to extend control over the affairs of B:
- (c) if A is a company, where the B is a director or officer of A, or is related (within the meaning of paragraph (a)) to a director or officer of A, or is directly or indirectly able to exercise control over the affairs of A:

- (d) if the both A and B are companies—
 - (i) where one company is a holding company or is a subsidiary company of the other company, as the case may be; or
 - (ii) where either company owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the company; or
 - (iii) where both companies have the same holding company, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of each of them.

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

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

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

(4) For the purposes of this section, "purchaser" means—

- (a) a person (other than a person liable to pay the duty) who acquired the goods; or
- (b) a subsequent purchaser of the goods—

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

(5) In any case where a person claims, or before the taking of possession of the goods by the Comptroller, that he or she is a purchaser to whom subsection (3) applies and there is a dispute as to whether that subsection applies the Comptroller may—

- (a) where the goods are in the possession or control of the importer, take possession of the goods and subject to subsection (7), retain possession of them;
- (b) where the goods are in the possession or control of the purchaser, by notice in writing, direct the purchaser, subject to subsection (7), to retain the possession or control of the goods,—

pending the resolution of the dispute, and subsections (7) to (9) apply.

(6) In any case where—

- (a) possession of the goods have been taken by the Comptroller but the goods have not been sold; and
- (b) a person notifies the Comptroller that he or she claims that he or she is a purchaser to whom subsection (3) applies; and
- (c) there is a dispute as to whether that subsection applies,—

the Comptroller must, subject to subsection (7), retain possession of the goods pending the resolution of the dispute, and subsections (7) to (9) apply.

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

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

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

133. Application of section 134 - Section 134 applies to the recovery of unpaid duty—

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

134. Ranking of duty - (1) Unpaid duty to which this section applies must be paid in accordance with the following provisions of this section.

(2) In the case of an individual, upon the person's bankruptcy or upon the person making an assignment for the benefit of the person's creditors, the amount of any duty to which this section applies must rank, in order of priority, immediately after the preferential claims for wages or other sums payable to any worker, and in priority to all other claims except value added tax paid in accordance with the Value Added Tax Act 1997.

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

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

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

(6) Nothing in this section or in section 132 derogates from section 135.

135. Release of goods subject to duty - (1) Except as otherwise provided in this Act, or in such cases as may be approved by the Comptroller, and subject to such securities as the Comptroller may require, no person is entitled to obtain release of goods from the control of Customs until the sum payable by way of duty on the goods is paid in full.

(2) No action or other proceeding may be instituted against the Crown or the Comptroller or any Customs officer in respect of the detention of any such goods during any period before the payment of the full sum so payable.

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

136. Liability for duty on goods wrongfully removed or missing - (1) The licensee of a Customs controlled area is liable for duty payable on goods that the Comptroller is satisfied have been wrongfully removed from or are missing from that Customs controlled area as if the goods had been imported or manufactured by the licensee and entered under section 62 or section 106, as the case may be.

(2) The licensee is not released from liability under this section by virtue of any other provision of this Act or any other written law.

(3) If—

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

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

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

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

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

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

137. Liability of owners of craft for duty on goods unlawfully landed - (1) If cargo or stores or other goods are unlawfully landed in the Cook Islands in or from a craft that is within the Cook Islands, the owner and the person in charge of the craft (without prejudice to the liability of any other person) are jointly and severally liable for the payment of the duty on the cargo stores or other goods, as if that cargo or those stores or other goods had been imported by them and entry had been made and passed for home consumption under section 62.

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

(3) In any proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Comptroller is presumed to be due and payable unless the contrary is proved.

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

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

139. Incidence of altered duties - (1) In the case of an alteration in the law relating to the liability of goods to duty or the rate of duty to which goods are liable, such liability or rate must, except where otherwise expressly provided, be determined—

- (a) in the case of goods held in an export warehouse, or produced in a manufacturing area, by the law in force at the time the goods are removed from the export warehouse or manufacturing area;
- (b) in the case of other goods, by the law in force at the time the goods are imported into the Cook Islands.

(2) In this section, the term “alteration in the law” includes variation that takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

140. Assessment of duty in particular cases - (1) When duties are imposed according to a specified quantity, weight, size, or value, the duties must be charged proportionately on a greater or smaller quantity, weight, size, or value.

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

- (a) the means of ascertaining the volume of alcohol present in an alcoholic beverage is to be determined from time to time by the Comptroller in consultation with a qualified analyst; and
- (b) if, on entry under section 62 or 106, it is ascertained that the volume of alcohol has increased or diminished by natural process of change while subject to the control of Customs, duty is payable in accordance with the volume of alcohol as so increased or diminished.

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

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

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

142. Payment of duty by importer, exporter or licensee leaving the Cook Islands - (1) Upon the application of any person being an importer, exporter or licensee under this Act about to leave the Cook Islands, if the Comptroller is satisfied—

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

the Comptroller may issue a certificate to the effect that the person is not under any liability for duty requiring to be discharged before the person leaves the Cook Islands.

(2) Every certificate issued under this section must remain in force for such period or until such date as may be specified in that behalf in the certificate.

(3) If any person, being an importer, exporter, or licensee under this Act is about to leave the Cook Islands, and—

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

the Comptroller may issue a certificate to the effect that the person is under a liability for duty that is required to be discharged before the person leaves the Cook Islands.

(4) The Comptroller may serve such certificate on an international airline operating flights to and from the Cook Islands and that airline must not allow the person named in the certificate to be removed from the Cook Islands on its aircraft until the airline is provided with a certificate from the Comptroller issued under subsections (1) and (2).

(5) The Comptroller may serve such certificate on the person named in the certificate and such person must take no further steps to leave the Cook Islands by any means whatsoever until the Comptroller has issued a certificate under subsections (1) and (2) or a Judge of the High Court permits it under rule 284 of the Code of Civil Procedure of the High Court 1981.

(6) In addition to serving the certificate under subsection (4), the Comptroller may apply to a Judge of the High Court under rule 284 for a writ of arrest and the provisions of that rule will apply in full to such application.

Refunds, remissions, and drawbacks of duty

143. Comptroller may refund duty paid in error - (1) If the Comptroller is satisfied that duty has been paid in error, either of law or of fact, the Comptroller must, unless there is good reason not to, refund the duty—

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

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

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

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

144. Refunds of duty on goods under Tariff Act – (1) Where duty has been paid on imported goods and the Minister subsequently approves, under section 12 of the Customs Tariff Act 2012, a lower rate of duty or exempts the goods from duty, the Comptroller must refund in whole or in part the duty paid so that the total duty paid on the goods is in accordance with the terms (including the effective date) of the approval.

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

145. Other refunds and remissions of duty - (1) Subject to any prescribed exceptions, restrictions, or conditions, the Comptroller may refund or remit any duty where the Comptroller is satisfied that imported goods, or goods manufactured in the Cook Islands, as the case may be,—

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

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

(3) The Comptroller may refund or remit any excise-equivalent duty imposed under section 111—

- (a) on goods of a class or kind that have been exempted from duty section 13 of the Customs Tariff Act 2012; or
- (b) On alcoholic beverages (except ethyl alcohol of Tariff items 2207.10.19, 2207.10.29, 2207.20.01, or 2207.20.39) for use of either person, in the places, and in the quantities that the Comptroller may approve, and subject to any conditions that the Comptroller thinks fit in the manufacture of any products approved in writing by the Comptroller.

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

146. Power to apply refunds towards payment of other duties - Where under any provision of this Act duty is or becomes refundable to any person, the Comptroller may, apply the whole or any part of the sum so refundable towards the payment of any other duty that is payable by that person, or may refund the whole sum to that person.

147. Recovery of duty refunded in error - Money refunded by Customs in error of fact or law is recoverable by action at the suit of the Comptroller on behalf of the Crown at any time within 4 years after the date of its payment or any time if the refund has been obtained by fraud.

148. Goods temporarily imported - (1) Subject to this section, where the Comptroller is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods must be secured, under section 198, in such cases as may be approved by the Comptroller, and on receipt of such security the Comptroller may release the goods from the control of Customs without payment of duty.

(2) Subject to such conditions (if any) as may be prescribed, the person giving the security must be released from the conditions of the security or, as the case may be subject to subsection (3), a deposit of money made must be returned to the person by whom it was made if, within 12 months from the date of their importation, the Comptroller is satisfied that the goods have been—

- (a) exported; or
- (b) shipped for export; or
- (c) packed for export into a bulk cargo container in a Customs controlled area and the container secured to the satisfaction of the Comptroller; or
- (d) not deliberately destroyed unless with the permission of the Comptroller; or
- (e) dealt with in such manner as the Comptroller may allow.

(3) Where in any case goods temporarily imported and used for industrial or commercial purposes or such other purposes as the Comptroller may consider applicable, duty is payable in respect of the goods on the amount by which their value for duty, as determined by the Comptroller at the time that he or she is satisfied under subsection (2) that the goods have been dealt with under any of paragraphs (a) to (e) of that subsection, is less than their value for duty, as ascertained in accordance with this Act, at the time of their importation.

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

(5) Despite subsection (3), but subject to such conditions as the Minister may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement, or arrangement concluded by the Government of the Cook Islands.

(6) If, at the expiry of the period prescribed by subsection (2), the goods have not been dealt with in accordance with that subsection—

- (a) any sum secured by way of deposit of money must be retained by the Crown; or
- (b) any sum otherwise so secured must be paid to the Crown by the importer within 10 working day after the expiry of that period, and on such payment the security must be released.

149. Drawbacks of duty on certain goods - (1) Subject to this section, drawbacks of duty may be allowed, at such amounts and subject to such conditions as may be prescribed, on—

- (a) goods imported into the Cook Islands that are later exported from the Cook Islands;
- (b) goods that are produced in a manufacturing area and exported from the Cook Islands;
- (c) imported parts, and materials used in, worked into, or attached to, goods manufactured or produced in the Cook Islands and exported from the Cook Islands;
- (d) imported materials, except fuel or plant equipment consumed in the manufacture or production of goods produced in the Cook Islands and exported from the Cook Islands.

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

(3) Where drawback has been allowed on any goods consumed in the manufacture of those goods, the goods must not, without the permission of the Comptroller, be unshipped or relanded or unpacked before export.

(4) Where drawback has been allowed on goods consumed in manufacture of those goods and drawback has been paid in respect of any goods that are unshipped or relanded or unpacked before export, the amount of drawback allowed in respect of those goods or on goods consumed in the manufacture of those goods, immediately on their unshipment or relanding or unpacking, constitutes a debt due to the Crown; and such debt is immediately payable by the owner of the goods at the time of their unshipment or relanding or unpacking.

(5) Such debt is recoverable by action at the suit of the Comptroller on behalf of the Crown.

(6) The right to recover drawback as a debt due to the Crown under this section is not affected by the fact that a bond or other security has been given in respect of the unshipment or relanding or unpacking of the goods before export.

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

150. Regulations may prescribe minimum duty collectable or refundable and minimum drawback allowable - Without limiting the power to make regulations conferred by section 352, regulations made under that section may prescribe—

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

Part 11
Customs rulings

151. Application for Customs ruling - (1) A person may make an application, in respect of particular goods specified in the application, to the Comptroller for a Customs ruling in respect of any one or more of the following matters:

- (a) the Tariff Classification of those goods under Part 1 of the Tariff;
 - (b) the excise classification of those goods under the Excise Order;
 - (c) whether or not those goods are, for the purposes of the Tariff and in accordance with any applicable regulations made under this Act, the produce or manufacture of a particular country or group of countries, referred to in the application;
 - (d) whether or not those goods are subject to a specified duty concession under Part 2 of the Tariff.
- (2) An application under subsection (1) may be made—
- (a) in respect of imported goods—
 - (i) at any time before the date of importation into the Cook Islands of the goods that are subject of the application; or
 - (ii) at any later time, if the Comptroller permits; or
 - (b) in respect of goods manufactured in a manufacturing area—
 - (i) at any time before the date of manufacture of the goods; or
 - (ii) at any later time, if the Comptroller permits.

(3) A person may make an application in relation to a particular matter specified in the application, to the Comptroller for a Customs ruling as to the correct application of any provision contained in regulations made under section 99.

(4) Every application under subsection (1) or subsection (3) must be in the prescribed form, and must—

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

(5) The Comptroller may, at any time, request further information from an applicant if the Comptroller considers that the information is relevant to the application.

152. Making of Customs ruling - (1) Subject to subsection (4), the Comptroller must—

- (a) in the case of an application made under section 151(1), make a Customs ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought; or

- (b) in the case of an application made under section 151(3), make a Customs ruling in respect of the particular matter specified in the application.
- (2) The Comptroller must make a Customs ruling under subsection (1) within such time or times as may be prescribed after receipt of—
 - (a) in the case of an application under section 151(1)—
 - (i) a properly completed application in respect of particular goods; and
 - (ii) the goods or a sample of the goods unless the Comptroller has agreed not to require receipt of the goods; and
 - (b) all information that the Comptroller considers relevant to a proper consideration of the application; and
 - (c) all information that the Comptroller requests under 151(5); and
 - (d) payment of the prescribed fee.
- (3) A Customs ruling may be made subject to such conditions as the Comptroller thinks fit.
- (4) The Comptroller may decline to make a Customs ruling if, in the Comptroller's opinion, he or she has insufficient information to do so.

153. Notice of Customs ruling - The Comptroller must promptly give notice in writing to the applicant of—

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

154. Effect of Customs ruling - (1) A Customs ruling in respect of particular goods is conclusive evidence for the purposes of this Act that the goods—

- (a) have a particular tariff classification under Part 1 of the Tariff; or
- (b) have a particular excise classification under the Excise Order; or
- (c) are or are not, as the case may be in accordance with applicable regulations made under this Act, the produce or manufacture of a particular country, a group of countries, for the purposes of the Tariff Act 2012; or
- (d) are or are not, as the case may be, subject to a specified duty concession under Part 2 of the Tariff.

(2) Subject to section 157, a Customs ruling in respect of a particular matter in respect of which a ruling has been given under section 152(1)(b) is conclusive evidence for the purposes of this Act and, where applicable, the Tariff Act 2012, of the application of the regulation or regulations on which the ruling was made in relation to that matter.

155. Confirmation of basis of Customs ruling - At any time after a Customs ruling is made, the Comptroller may by notice in writing, require the applicant to satisfy the Comptroller in such manner and within 20 working days or such longer period as the Comptroller considers appropriate—

- (a) that the facts or information on which Customs ruling was made remain correct; and
- (b) that any conditions on which Customs ruling was made have been complied with.