

S.P. 57/16



ST. HELENA

GOVERNMENT OF SAINT HELENA

A BILL FOR AN ORDINANCE

THE CUSTOMS AND EXCISE (AMENDMENT) ORDINANCE, 2016

*Laid Upon the Table, 9<sup>th</sup> December 2016*





## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

**to amend the Customs and Excise Ordinance, Cap. 145, to make provision for the new Automated System for Customs Data and implementation of the Harmonized Commodity Description and Coding System for the classification of traded goods; and for purposes connected therewith or incidental thereto.**

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

#### **Citation, commencement and interpretation**

1. (1) This Ordinance may be cited as the Customs and Excise (Amendment) Ordinance, 2016, and comes into force on the date of publication.

(2) In this Ordinance, “the principal Ordinance” means the Customs and Excise Ordinance, Cap. 145.

#### **Interpretation**

2. Section 2 of the principal Ordinance is amended—

- (a) by repealing the definition of “approved form” and substituting the following therefor:  
“**“approved form”** means a form (including a form in electronic format) prescribed by regulations made under section 41 or, in the absence thereof, approved by the Collector;”;
- (b) by deleting the word “Controller” in paragraph (a) of the definition of “duty free shop” and substituting “Collector” therefor;
- (c) by repealing the definition of “perfect entry”.

#### **Confidentiality**

3. Section 4 of the principal Ordinance is amended by adding the following subsections:

“(4) A customs officer shall not disclose to any third party any information relating to any person or business which comes to his knowledge during the performance of his duties, except with the permission of the Collector.

(5) A customs officer who contravenes subsection (4) commits an offence.

Penalty: A fine of £500 or imprisonment for three months, or both.”.

### **Removal of goods from customs area**

4. Section 7 of the principal Ordinance is amended by repealing subsection (4).

### **Entries to be made**

5. Section 8 of the principal Ordinance, other than the heading, is revoked and the following is substituted therefor:

“8. (1) All imported goods shall be entered or otherwise accounted for in the approved form for either—

- (a) home consumption;
- (b) warehousing;
- (c) transshipment; or
- (d) for supply to and sale by a duty free shop.

(2) Subject to subsections (3) and (5), the owner or his agent shall submit an entry in respect of all imported goods to the Collector in the approved form, and shall pay all dues thereon.

(3) In the case of prescribed categories of passengers' baggage and other packages, the importer, on making a satisfactory declaration in such form and manner as the Collector may require, shall be permitted to remove such goods without making any entries.

(4) The owner or his agent shall on presenting entries—

- (a) submit for verification and filing with the Customs an original or acceptable duplicate invoice in respect of the goods to which the entry relates;
- (b) produce for inspection such other documents as any Customs Officer may reasonably require; and
- (c) answer to the best of his knowledge and belief any question with respect to such entries.

(5) If the owner is unable, owing to the absence of any invoice of cost, to supply the full particulars for making an entry under subsection (2), the owner and a customs officer may agree on the value of the goods which shall be entered on a document (hereinafter referred to as a “Bill of Sight”) to be used for purposes of submitting such entry and for payment of the relevant duties.

(6) An owner who has submitted a Bill of Sight under subsection (5) shall within 3 working days after the passing of the entry, or such further time as the Collector may allow, submit the final invoice and, where applicable, pay the difference in any dues payable or claim a refund of any excess of dues paid thereon.”.

### **Provisional entries**

6. Section 9 of the principal Ordinance is repealed.

### **Special procedure for approved importers**

7. Section 10 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“10. (1) The Collector, in his discretion, may grant “approved importer” status to any importer who regularly imports goods of a certain class or description as part of a business carried on by him, if the importer signs a bond in the approved form—

- (a) in respect of an amount sufficient to cover all dues likely to be found payable on examination and verification of the entries; and
  - (b) incorporating an undertaking to pay all dues payable within a period of 28 days from the date of importation of the goods.
- (2) The Collector may at any time revoke a grant under subsection (1).

### **Passing entries and delivery of goods**

8. Section 12 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“12. (1) An entry shall be passed if all dues in respect of the goods have been assessed and paid or, in the case of an approved importer, a bond has been instituted to cover the duty liability of the goods imported.

(2) No goods may be removed from a customs area without proof that the entry in respect of such goods has been passed under subsection (1) and that approval has been granted for removal of such goods:

Provided that goods entered for warehousing or imported for purposes of supply to and sale by a duty free shop shall be removed from the customs area directly to the warehouse or premises of such duty free shop, as the case may be.”.

### **Calculation of dues**

9. Section 21 of the principal Ordinance is amended—

- (a) by deleting the expressions “open market value” and “actual market value” in subsection (5) and substituting “transaction value” therefor; and
- (b) by repealing subsection (6) and substituting the following therefor:

“(6) If the value of any imported goods substituted under subsection (5)(a) is disputed by any person concerned in the importation or exportation, the Collector may, if practicable, detain such goods, and if the dues in respect thereof are not paid within three months thereafter, those goods may be auctioned.”.

### **Goods of more than one material**

10. Section 24 of the principal Ordinance is repealed.

### **Dues short levied or remaining unpaid**

11. Section 26 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“26. (1) When any dues have been short levied, the person who should have paid the full dues shall, on demand being made by a customs officer, pay the outstanding amount, and the Collector may refuse to pass any entries for goods belonging to such person until the dues have been paid.

(2) If any dues are not paid to the Collector on demand by the person who should have paid the full dues in accordance with subsection (1), the Collector may—

- (a) if practicable, detain the goods concerned until the full amount has been paid; or
- (b) if the goods have been released, refuse to allow release of any further goods imported by such person prior to such payment.

(3) Any goods detained under subsection (2) may be sold by the Collector if the outstanding dues remain unpaid after the expiration of three months from the date on which they were first detained.

(4) Any dues payable under the Ordinance which remain unpaid may be recovered in the name of the Collector as a civil debt due to the Government.”.

### **Powers of customs officers**

12. The following sections are inserted in the principal Ordinance after section 31:

#### **“Power to demand information or documents**

**31A. (1)** A customs officer may, for purposes of verification of any information relating to any goods imported or to be exported, demand from any importer, exporter or agent, within a reasonable time and at a specific place, any information or the production of any documents relating to such goods.

(2) A customs officer may demand the production of any documents referred to in subsection (1) from the person mentioned in that subsection or from any other person he believes to be in possession of those documents.

(3) A customs officer may make copies or take abstracts of any documents produced and may, where necessary, detain for a reasonable period any such documents and must, if requested, issue a receipt to the person who produced the documents.

(4) If any document received by a customs officer is reasonably requested for the smooth operation of the business, the officer must provide the importer, exporter or agent with a copy the document within a reasonable time.

(5) The Collector may require any government authority or other organisation to furnish him with information applicable to any goods referred to in subsection (1).

(6) A person providing information or producing any document or permitting an officer to examine and make copies and take extracts thereof must do so without any charge.

#### **Power to ascertain accuracy of information after release of goods**

**31B. (1)** A customs officer may, after the release of goods and in an effort to ascertain the accuracy of information contained in a declaration relating to those goods,—

(a) inspect any document relating to those goods or to any operation concerning the importation of those goods;

(b) examine the goods or take samples where it is possible to do so.

(2) The inspection or examination under subsection (1) may be carried out at the premises of—

(a) the importer or exporter of the goods or his representative;

(b) any person directly or indirectly involved in the operation of the business;

(c) any person in possession of the documents.

(3) A customs officer may exercise the power under subsection (1) in respect of goods that are—

(a) imported into St Helena;

(b) exported from St Helena; or

(c) being transported through St Helena.

(4) A customs officer may demand any information in respect of the goods or documents from any importer, exporter or agent.

#### **Power to search premises for goods liable to forfeiture**

**31C. (1)** Where there are reasonable grounds to suspect that any goods liable to forfeiture or documents relating to the commission of an offence under this Ordinance, or otherwise involving the importation or exportation of goods, are kept concealed in any house, shop, cellar, warehouse, room or any other place, a customs officer may by warrant, enter the premises and examine, search for, detain and seize any such goods or documents.

**(2)** A customs officer may in case of resistance, break open any door, chest, trunks or package and force and remove any impediment or obstruction to an entry or seizure under subsection (1).

### **Powers to use appropriate scientific means for control purposes**

**31D. (1)** A customs officer, in verifying compliance of imported or exported goods, may use scientific methods or other methods as are approved by the Collector.

**(2)** For purposes of subsection (1), “scientific methods” means the use of a technical, chemical, empirical or factual medium for gathering information.”

### **Regulations**

**13.** Section 41 of the principal Ordinance is amended—

*(a)* by repealing paragraph *(h)* and substituting the following therefor:

“*(h)* the prohibition, restriction or regulation of the importation or exportation of any goods or class of goods for biosecurity reasons or otherwise.”;

*(b)* by adding the following paragraph:

“*(n)* the use of electronic communication and data systems for purposes of submitting, receiving or processing documents and information under this Ordinance and for the use of digital signatures.”.

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#### **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Ordinance amends the Customs and Excise Ordinance, Cap. 145, to make provision for the implementation of ASYCUDA, the new Automated System for Customs Data. The tariffs of imported goods for customs duty purposes will now also be classified under the International Harmonized Commodity Description and Coding System. The Ordinance also introduces an enabling provision for documents to be submitted and received electronically and for the use of digital signatures on such documents and further regulates the powers of customs officers and confidentiality of information obtained by customs officers in the performance of their duties.

